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No. 40] NEW DELHI, SEPTEMBER 28-OCTOBER 4, 2008, SATURDAY/ASVINA 6-ASVINA 12, 1930

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पुष्पक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)

PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

विधि और न्याय मंत्रालय

(विधि कार्य विभाग)

नई दिल्ली, 23 सितम्बर, 2008

का. आ. 2747.—केन्द्रीय सरकार, दंड प्रक्रिया संहिता, 1973 (1974 का 2) की धारा 25 की उपधारा (1क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, बृहत्तर मुंबई में महानगर मजिस्ट्रेट के न्यायालयों और विशेष न्यायालयों में भारत संघ या केन्द्रीय सरकार के किसी विभाग या कार्यालय या अपनी सरकारी हैसियत में कार्य कर रहे केन्द्रीय सरकार के विभाग के किसी अधिकारी द्वारा या उसके विरुद्ध सभी दंडिक मामलों का संचालन करने के प्रयोजन के लिए श्री अजीत एस. इनामदार, अधिवक्ता, मुंबई और श्री आर. के. पाठक, अधिवक्ता, मुंबई को सहायक लोक अधिवक्ताओं के रूप में नियुक्ति की अवधि को राजपत्र में इस अधिसूचना के प्रकाशन की तारीख से एक वर्ष की अवधि के लिए या अगले आदेश तक, इनमें से जो भी पूर्वतर हो, इस शर्त के अधीन रहते हुए विस्तारित करती है कि ऊपर

उल्लिखित अधिवक्ता किसी दंडिक मामले में केन्द्रीय सरकार या केन्द्रीय सरकार के किसी अधिकारी अथवा केन्द्रीय सरकार के किसी विभाग के विरुद्ध बृहत्तर मुंबई में किसी महानगर मजिस्ट्रेट के न्यायालयों और विशेष न्यायालयों में उपसंज्ञात नहीं होंगे।

[फा. सं. 23(3)/2008-न्या.]

एम. ए. खान युसुफी, संयुक्त सचिव और विधि सलाहकार

MINISTRY OF LAW AND JUSTICE

(Department of Legal Affairs)

New Delhi, the 23rd September, 2008

S.O. 2747.—In exercise of the powers conferred by sub-section (1A) of Section 25 of the Code of Criminal Procedure, 1973 (2 of 1974), the Central Government hereby extends the term of appointment of Shri Ajit S. Inamdar, Advocate, Mumbai and Shri R. K. Pathak, Advocate, Mumbai as Assistant Public Prosecutors for the purpose of conducting all criminal cases by or against the Union of

India or any Department or Office of the Central Government or any officer of the Central Government Department acting in his official capacity in the Metropolitan Magistrate Courts and Special Courts in Greater Mumbai, with effect from the date of publication of this notification in the Official Gazette, for a period of one year or until further orders, whichever is earlier, subject to the condition that the above mentioned advocates shall not appear in any criminal case in any Metropolitan Magistrate Court and Special Court in Greater Mumbai against the Central Government or any officer of the Central Government or against any Department of the Central Government.

[F. No. 23(3)/2008-Jud.]

M. A. KHAN YUSUFI, Jr. Secy. and Legal Adviser

कार्यिक, लोक शिकायत तथा पेंशन मंत्रालय

(कार्यिक और प्रशिक्षण विभाग)

नई दिल्ली, 23 सितम्बर, 2008

का. आ. 274B.—केन्द्रीय सरकार एतद्वारा, दंड प्रक्रिया संहिता, 1973 (1974 का अधिनियम सं. 2) की धारा 24 को उपधारा (8) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, निम्नलिखित अधिकारियों को आन्ध्र प्रदेश राज्य हैदराबाद में केन्द्रीय अन्वेषण ब्यूरो द्वारा उन्हें सौंपे गए परीक्षण न्यायालयों और अपीलों और इनसे उद्भूत अपीली न्यायालयों में दिल्ली विशेष पुलिस स्थापना (के.अ. ब्यूरो) द्वारा संस्थित मामलों का संचालन करने के लिए सहायक लोक अभियोजक के रूप में नियुक्त करती है :-

सर्वश्री

- | | |
|-----------------------|---------------------|
| 1. के. राम मूर्ति | 4. बी. राघवेंद्र |
| 2. गोपाल कृष्ण मूर्ति | 5. बी. कल्याण कुमार |
| 3. वाई. अरुणा गामिनी | |

[फा. सं. 225/20/2005/एवीडी-II]

चंद्र प्रकाश, अवर सचिव

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS

(Department of Personnel and Training)

New Delhi, the 23rd September, 2008

S.O. 2748.—In exercise of the powers conferred by sub-section (8) of Section 24 of the Code of Criminal Procedure, 1973 (Act No. 2 of 1974), the Central Government hereby appoints following Advocates as Special Public Prosecutor for conducting prosecution of cases instituted by the Delhi Special Police Establishment (CBI) in the State of Andhra Pradesh at Hyderabad as entrusted to them by the Central Bureau of Investigation in the trial courts and appeals/revisions or other matter arising out of these cases in revisional or appellate courts established by law :

S/Shri

- | | |
|---------------------------|---------------------|
| 1. K. Ram Murthy, | 4. B. Raghavendra, |
| 2. Gopala Krishna Murthy, | 5. B. Kalyan Kumar, |
| 3. Y. Aruna Gamini, | |

[F. No. 225/20/2005-AVD-II]

CHANDRA PRAKASH, Under Secy.

नई दिल्ली, 23 सितम्बर, 2008

का. आ. 2749.—केन्द्रीय सरकार एतद्वारा दंड प्रक्रिया संहिता, 1973 (1974 का अधिनियम सं. 2) की धारा 24 को उपधारा (8) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, डा. के.पी. साधोसन अधिवक्ता को कोचीन, केरल राज्य के विचारण न्यायालयों में दिल्ली विशेष पुलिस स्थापना (के.अ. ब्यूरो) द्वारा संस्थित और केन्द्रीय अन्वेषण ब्यूरो द्वारा उन्हें सौंपे गए मामलों के अभियोजन और पुनरीक्षण अथवा अपील न्यायालयों में इन मामलों से उद्भूत अन्य विषयों का संचालन करने के लिए विशेष लोक अभियोजक के रूप में नियुक्त करती है।

[फा. सं. 225/31/2007-एवीडी-II (पार्ट-I)]

चंद्र प्रकाश, अवर सचिव

New Delhi, the 23rd September, 2008

S.O. 2749.—In exercise of the powers conferred by sub-section (8) of Section 24 of the Code of Criminal Procedure, 1973 (Act No. 2 of 1974), the Central Government hereby appoints Dr. K. P. Sathesnan, Advocate as Special Public Prosecutor for conducting prosecution of cases instituted by the Delhi Special Police Establishment (CBI) in the State of Kerala at Cochin as entrusted to him by the Central Bureau of Investigation in the trial courts and appeals/revisions or other matter arising out of these cases in revisional or appellate courts established by law.

[F. No. 225/31/2007-AVD-II (Pt.-I)]

CHANDRA PRAKASH, Under Secy.

नई दिल्ली, 23 सितम्बर, 2008

का. आ. 2750.—केन्द्रीय सरकार एतद्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का अधिनियम सं. 25) की धारा 6 के साथ पठित धारा 5 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, आंध्र प्रदेश राज्य सरकार, गृह (एस.सी.ए.) विभाग की अधिसूचना सं. जीओएमएस सं. 58 दिनांक 24 मार्च, 2008 द्वारा प्राप्त सहमति से श्रीमती अंशु बर्गीस की हत्या के मामले में अन्वेषण हेतु बंजारा हिल्स, हैदराबाद पुलिस थाना में दर्ज मामला सं. 464/2006 से उद्भूत भारतीय दंड संहिता 1860 (1860 का अधिनियम सं. 45) की धारा 304-बी और 201 तथा दहेज प्रतिषेध अधिनियम, 1961 (1961 के अधिनियम सं. 28) की धारा 3 और 4 के अधीन दंडनीय अपराध तथा दक्त अपराध से संबंधित अथवा संसक्त प्रवर्तनों, दुष्प्रेरणों और घड़यंत्रों और उसी संव्यवहार के अनुक्रम

में किए गए अथवा उन्हीं तथ्यों से उद्भूत किसी अन्य अपराधों का अन्वेषण करने के लिए दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और अधिकारिता का विस्तार सम्पूर्ण आंध्र प्रदेश राज्य पर करती है।

[फा. सं. 228/35/2008-एवीडी-II]

चंद्र प्रकाश, अवर सचिव

New Delhi, the 23rd September, 2008

S.O. 2750.—In exercise of the powers conferred by sub-section (1) of Section 5 read with Section 6 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946), the Central Government with the consent of the State Government of Andhra Pradesh, Home (SCA) Department vide notification G.O. Ms. No. 58 dated 24th March, 2008, hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment to the whole of the State of Andhra Pradesh for investigation into the murder of Mrs. Ansu Varughis at Hyderabad vide crime No. 464/06 under Sections 304-B and 201 of the Indian Penal Code, 1860 (Act No. 45 of 1860) and Sections 3 and 4 of the Dowry Prohibition Act, 1961 (Act No. 28 of 1961) registered at Police Station Banjara Hills, Hyderabad and attempts, abetments and conspiracies in relation to or in connection with the offence or offences committed in the course of the same transaction, or arising out of the same facts.

[F. No. 228/35/2008-AVD-II]

CHANDRA PRAKASH, Under Secy.

नई दिल्ली, 23 सितम्बर, 2008

का. आ. 2751.—केन्द्रीय सरकार एतद्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का अधिनियम सं. 25) की धारा 6 के साथ पठित धारा 5 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए गोवा राज्य सरकार, गृह विभाग (सामान्य) सचिवालय पोर्तोरिम गोवा की अधिसूचना सं. 16/7/2008-एचडी (जी) दिनांक 6 मई, 2008 द्वारा गोवा विधानसभा के सदस्य श्री एयनासियो डी फ्रांको मोनसेराते के नेतृत्व में एक मोर्चे द्वारा पणजी पुलिस स्टेशन पर हिंसक हमले के मामले के संबंध में पुलिस स्टेशन पणजी में भारतीय दंड संहिता, 1860 (1860 का अधिनियम सं. 45) की धारा 147, 332, 323, 324, 435, 427, 307 संपठित धारा 120-बी, 148 और 34 के तहत दर्ज (1) एफआईआर सं. 57/2008, भारतीय दंड संहिता, 1860 (1860 का अधिनियम सं. 45) की धारा 143, 147, 148, 332, 323 संपठित धारा 149 के तहत दर्ज (2) एफआईआर सं. 58/2008 और भारतीय दंड संहिता, 1860 (1860 का अधिनियम सं. 45) की धारा 143, 147, 148, 341, 332, 427 संपठित धारा 149 के तहत दर्ज (3) एफआईआर सं. 59/2008 के अधीन अपराधों और उपर्युक्त अपराधों में से एक अथवा अधिक से संबंधित अथवा संसक्त प्रयत्नों, दुष्चर्यों और षडयंत्र तथा उसी संव्यवहार के अनुक्रम में किए गए अथवा उन्हीं तथ्यों से उद्भूत किसी अन्य अपराध अथवा अपराधों तथा ठकुर घटना या इसके संव्यवहार के संदर्भ में अनुबंध-1 के अनुसार विभिन्न व्यक्तियों द्वारा दायर

शिकायतों का भी अन्वेषण करने के लिए दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और अधिकारिता का विस्तार सम्पूर्ण गोवा राज्य पर करती है।

[फा. सं. 228/34/2008-एवीडी-II]

चंद्र प्रकाश, अवर सचिव

New Delhi, the 23rd September, 2008

S.O. 2751.—In exercise of the powers conferred by sub-section (1) of Section 5 read with Section 6 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946), the Central Government with the consent of the State Government of Goa, Home Department (General) Secretariat Porvorim Goa vide Notification No. 16/7/2008-HD(G) dated 6th May, 2008, hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment to the whole of the State of Goa of investigation of (1) FIR No. 57/2008 under Sections 147, 332, 323, 324, 435, 427, 307 read with 120-B, 148 and 34 of the Indian Penal Code, 1860 (Act No. 45 of 1860), (2) FIR No. 58/2008 under Sections 143, 147, 148, 332, 323 read with 149 of the Indian Penal Code, 1860 (Act No. 45 of 1860) and (3) FIR No. 59/2008 under Sections 143, 147, 148, 341, 332, 427 read with 149 of the Indian Penal Code, 1860 (Act No. 45 of 1860) registered at Police Station Panaji relating to the matter of violent attack of Panaji Police Station by a morcha led by Shri Atanacio alias Babush Monseratte, Member of Legislative Assembly of Goa and attempts, abetments and conspiracies in relation to or in connection with the offence mentioned above and any other offence or offences committed in the course of the same transaction or arising out of the same facts and also the complaints filed by different persons in respect of the same incident or transaction consequent to same incident as per Annexure-I.

[F. No. 228/34/2008-AVD-II]

CHANDRA PRAKASH, Under Secy.

नई दिल्ली, 26 सितम्बर, 2008

का. आ. 2752.—केन्द्रीय सरकार एतद्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का अधिनियम सं. 25) की धारा 6 के साथ पठित धारा 5 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए कर्नाटक राज्य सरकार की अधिसूचना सं. एचडी 119 सीओडी 2007 दिनांक 10-7-2008 द्वारा प्राप्त सहमति से पुलिस स्टेशन, जाल्ताहल्ली, बंगलूर शहर में भारतीय दंड संहिता की धारा 471, 420 संपठित धारा 511 के अंतर्गत दर्ज मामला सी.आर. सं. 189/2006 तथा किसी भी अन्य लोकसेवक या उपर्युक्त अपराधों से संबंधित तथा उसी संव्यवहार के अनुक्रम में अथवा उन्हीं तथ्यों से उद्भूत किसी अन्य अपराध अथवा अपराधों का अन्वेषण करने के लिए दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और अधिकारिता का विस्तार सम्पूर्ण कर्नाटक राज्य पर करती है।

[फा. सं. 228/65/2008-एचडी-II]

चंद्र प्रकाश, अवर सचिव

New Delhi, the 26th September, 2008

S.O. 2752.—In exercise of the powers conferred by sub-section (1) of Section 5 read with Section 6 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946), the Central Government with the consent of the State Government of Karnataka, Notification No. HD 119 COD 2007 dated 10-7-2008 hereby extends the powers and jurisdiction of the members of the Delhi Special Establishment for the registration and investigation of case C.R. No. 189/2006 registered in P.S. Jalahalli, Bangalore City U/s. 471, 420 r/w S11 IPC against any person in relation to or in connection with said offence or any other offences committed in the course of same transaction or arising out of the same facts in regard to this case, within the whole State of Karnataka.

[F. No. 228/65/2008-AVD-II]

CHANDRA PRAKASH, Under Secy.

वित्त मंत्रालय

(वित्तीय सेवाएं विभाग)

नई दिल्ली, 26 सितम्बर, 2008

का. आ. 2753.—बैंककारी विनियमन अधिनियम, 1949 (1949 का 10) की धारा 53 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, भारत सरकार, भारतीय रिजर्व बैंक की सिफारिश पर, एतद्वारा घोषणा करती है कि उक्त अधिनियम की धारा 10 की उपधारा (1) के खण्ड (ग) के उपखण्ड (झ) के उपबंध पंजाब नेशनल बैंक पर लागू नहीं होंगे, जहां तक उनका संबंध पंजाब नेशनल बैंक के अध्यक्ष एवं प्रबंध निदेशक श्री के. सी. चक्रवर्ती का कृषि वित्त निगम लि. (एएफसीएल) के निदेशक मंडल में निदेशक का पदभार ग्रहण करने से है।

[फा. सं. 20/5/2004-बीओ-1]

जी. बी. सिंह, उप सचिव

MINISTRY OF FINANCE

(Department of Financial Services)

New Delhi, the 26th September, 2008

S.O. 2753.—In exercise of the powers conferred by Section 53 of the Banking Regulation Act, 1949 (10 of 1949), the Government of India on the recommendation of the Reserve Bank of India, hereby declare that the provisions of sub-clause (i) of clause (c) of sub-section (1) of Section 10 of the said Act shall not apply to Punjab National Bank in so far as it relates to taking up directorship of Dr. K.C. Chakraborty, Chairman and Managing Director, Punjab National Bank on the Board of Agricultural Finance Corporation Ltd. (AFCL).

[F. No. 20/5/2004-BO-1]

G. B. SINGH, Dy Secy.

विदेश मंत्रालय

(सी पी सी प्रभाग)

नई दिल्ली, 18 सितम्बर, 2008

का.आ. 2754.—राजनयिक कौंसली अधिकारी (शपथ एवं शुल्क) अधिनियम, 1948 (1948 का 49वां) 2 के अंक (क) के अनुसरण में केन्द्रीय सरकार एतद् द्वारा भारत का प्रधान कौंसलावास, बर्मिन्गहम में श्री बी. प्रसाद सहायक को 18-9-2008 से सहायक कौंसली अधिकारी कार्य करने हेतु प्राधिकृत करती है।

[सं. टी-4330/1/2006]

प्रतीत लाल, अवर सचिव (कौंसुलर)

MINISTRY OF EXTERNAL AFFAIRS

(CPV Division)

New Delhi, the 18th September, 2008

S.O. 2754.—In pursuance of the clause (ii) of the Section 2 of the Diplomatic and Consular Officers (Oaths and fees) Act, 1948, the Central Government hereby authorize Shri B. Prasad, Assistant to perform the duties of Assistant Consular Officer in the Consulate General of India, Birmingham.

[No. T-4330/1/2006]

PRITAM LAL, Under Secy. (Consular)

स्वास्थ्य और परिवार कल्याण मंत्रालय

नई दिल्ली, 26 सितम्बर, 2008

का.आ. 2755.—केन्द्रीय सरकार राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उपनियम (4) के अनुसारण में स्वास्थ्य और परिवार कल्याण मंत्रालय के अन्तर्गत आने वाले निम्नलिखित कार्यालयों को जिसके 80 प्रतिशत से अधिक कर्मचारी हिन्दी ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, अधिसूचित करती है :—

1. केन्द्रीय योग एवं प्राकृतिक चिकित्सा अनुसंधान परिषद्, जनकपुरी, नई दिल्ली
2. अखिल भारतीय बाक् श्रवण संस्थान, मैसूर
3. क्षेत्रीय स्वास्थ्य एवं परिवार कल्याण कार्यालय, कोलकाता
4. केन्द्रीय यूनानी चिकित्सा अनुसंधान परिषद्, नई दिल्ली
5. क्षेत्रीय अनुसंधान संस्थान (अयुर्वेद), झांसी-284002
6. विमान पत्तन स्वास्थ्य संगठन दिल्ली हवाई अड्डा, नई दिल्ली
7. भारतीय उपचर्या परिषद्, कोटला रोड, नई दिल्ली

[सं. ई. 11012/1/94-रा. भा. कार्य. (हिन्दी-I)]

दोना नाथ पाठक, मुख्य लेखा नियंत्रक

MINISTRY OF HEALTH AND FAMILY WELFARE

New Delhi, the 26th September, 2008

S.O. 2755.—In pursuance of sub rule (4) of Rule 10 of the Official Language (Use of official purposes of Union) Rules, 1976, the Central Government hereby notifies the following offices under the Ministry of Health and Family Welfare, whereof 80 per cent staff have acquired working knowledge of Hindi:—

1. Central Council of Research in India Yoga & Naturopathy, Janakpuri, New Delhi.
2. All India Institute of Speech & Hearing, Mysore.
3. Regional Office of Health and Family Welfare, Kolkata.
4. Central Council of Research in Unani Medicine, Janakpuri, New Delhi.
5. Regional Institute of Research (Ayurved), Jhansi-284003.
6. Airport Health Organisation Delhi Air Port, New Delhi.
7. India Nursing Council, Kotla Road, New Delhi.

[No. E. 11012/1/94-O.L.I.(Hindi-I)]

D.N. PATHAK, Chief Controller of Accounts

संचार एवं सूचना प्रौद्योगिकी मंत्रालय

(दूरसंचार विभाग)

नई दिल्ली, 2 सितम्बर, 2008

का.आ. 2756.—जबकि केन्द्र सरकार का यह मत है कि श्री सुभाष गुप्ता, जेटीओ (सेवानिवृत्त), हरियाणा दूरसंचार सर्किल, अम्बाला से संबंधित विभागीय जांच के प्रयोजनार्थ श्री रविन्दर कौशिक, निवासी 128/11, दमदमा मोहल्ला, कौशिक चौक, इम्बर, हरियाणा को साक्षी के रूप में बुलाना/उनसे कोई दस्तावेज मांगना जरूरी है।

अतः अब केन्द्र सरकार एतद्वारा विभागीय जांच (साक्षी की उपस्थिति और दस्तावेज प्रस्तुत करने संबंधी अनिवार्यता) अधिनियम, 1972 (1972 का 18), की धारा-4, उप-धारा (1) के तहत प्रदत्त शक्तियों के प्रयोग में श्री सुन्दरलाल, एजीएम (पीजीएण्डआई)-सह-जांच अधिकारी, सीजीएमटी हरियाणा सर्किल का कार्यालय, अम्बाला को साक्षी को उपस्थित होने का निर्देश देने संबंधी उक्त

अधिनियम की धारा 5 में विनिर्दिष्ट शक्तियों का प्रयोग करने के लिए प्राधिकृत करती है।

राष्ट्रपति के आदेश से और उनकी ओर से।

[सं. 8-4/2005-सतर्कता-II]

के. के. मिगलानी, उप सचिव (बीबी)

MINISTRY OF COMMUNICATIONS AND I.T.**(Department of Telecommunications)**

New Delhi, the 2nd September, 2008

S.O. 2756.—Whereas the Central Government is of opinion that for the purpose of the Departmental Inquiry relating to Shri Subhash Gupta, JTO, (Retired), Haryana Telecom Circle, Ambala it is necessary to summon as witnesses/call for any document from Shri Ravinder Kaushik, R/o 128/11, Damdama Mohalla, Kaushik Chauk, Jhajjar, Haryana.

Now therefore, in exercise of the powers conferred by sub-section (1) of Section 4 of the Departmental Inquiries (Enforcement of Attendance of Witnesses and Production of Documents) Act, 1972 (18 of 1972), the Central Government hereby authorizes Shri Sunder Lal, A.G.M. (PG&I) cum-Inquiry Officer, O/o CGMT Haryana Circle, Ambala to exercise the powers specified in Section 5 of the said Act in relation to summon a witness.

By Order and in the Name of the President.

[No. 8-4/2005-Vig. II]

K. K. MIGLANI, Dy. Secy. (VB)

पोत परिवहन, सड़क परिवहन और राजमार्ग मंत्रालय

(पोत परिवहन विभाग)

नई दिल्ली, 24 सितम्बर, 2008

का.आ. 2757.—केंद्रीय सरकार राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 (यथा संशोधित 1987) के नियम 10 के उप-नियम 4 के अनुसरण में पोत परिवहन, सड़क परिवहन और राजमार्ग मंत्रालय, पोत परिवहन विभाग के प्रशासनिक नियंत्रण के अधीन निम्नलिखित कार्यालय में 80% से अधिक कर्मचारियों द्वारा हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लेने पर उसे एतद्वारा अधिसूचित करती है:—

भारतीय अन्तर्देशीय जलमार्ग प्राधिकरण,

पो-78, गार्डेन रोड रोड,

कोलकाता-700043

[फा. सं. ई-11011/1/2000-हिन्दी]

राकेश श्रीवास्तव, संयुक्त सचिव

MINISTRY OF SHIPPING, ROAD TRANSPORT AND HIGHWAYS

(Department of Shipping)

New Delhi, the 24th September, 2008

S.O. 2757.—In pursuance of sub rule (4) of the Rule 10 of the Official Language (Use for the purpose of the Union) Rules, 1976, (as amended 1987), the Central Government hereby notifies the following office under the administrative control of the Ministry of Shipping, Road Transport and Highways, Department of Shipping, more than 80% of the staff of which have acquired working knowledge of Hindi :—

Inland Waterways Authority of India,
P-78, Garden Reach Road,
Kolkata-700043.

[F.No.E-11011/1/2000-Hindi]

RAKESH SRIVASTAVA, Jt. Secy.

संस्कृति मंत्रालय

नई दिल्ली, 19 सितम्बर, 2008

का.आ. 2758.—केंद्रीय सरकार राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उप-नियम (4) के अनुसरण में संस्कृति मंत्रालय के प्रशासनिक नियंत्रणाधीन भारतीय मानव विज्ञान सर्वेक्षण, 27, जवाहर लाल नेहरू रोड, कोलकाता-700016 के निम्नलिखित कार्यालयों, जिनके 80 प्रतिशत से अधिक कर्मचारीवृन्द ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, को अधिसूचित करती है :—

1. भारतीय मानव विज्ञान सर्वेक्षण,
अण्डमान निकोबार क्षेत्रीय केन्द्र,
पोर्ट-ब्लेयर-744101।
2. भारतीय मानव विज्ञान सर्वेक्षण,
पूर्वी क्षेत्रीय केन्द्र, बिल्डिंग नं. 79,
सेक्टर-5, ई. एन.-9,
साल्टलेक सिटी, कोलकाता-700091।

[सं. 1-1/2008-हिन्दी]

लव वर्मा, संयुक्त सचिव

MINISTRY OF CULTURE

New Delhi, the 19th September, 2008

S.O. 2758.—In pursuance of sub rule (4) of the Rule 10 of the Official Language (Use for official purpose of the Union) Rules, 1976, the Central Government hereby notifies the following offices of Anthropological Survey of India, 27, Jawaharlal Nehru Road, Kolkata-700016 under the administrative control of the Ministry of Culture, whereof more than 80% of the staff have acquired working knowledge of Hindi :

1. Anthropological Survey of India,
Andaman & Nicobar,
Regional Office,
Port-Blair-744101.

2. Anthropological Survey of India,
Eastern Regional Centre,
Bldg. No. 79, Sector-V, EN-9,
Saltlake City, Kolkata.

[No. 1-1/2008-Hindi]

LOV VERMA, Jt. Secy.

कृषि मंत्रालय

(कृषि एवं सहकारिता विभाग)

नई दिल्ली, 23 सितम्बर, 2008

का.आ. 2759.—केंद्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उप-नियम (4) के अनुसरण में कृषि एवं सहकारिता विभाग, कृषि मंत्रालय के संबद्ध कार्यालय वनस्पति संरक्षण, संगरोध एवं संग्रह निदेशालय, फरीदाबाद के निम्नलिखित प्रशासनिक नियंत्रणाधीन कार्यालय को जिसके 80% कर्मचारीवृन्द ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, अधिसूचित करती है :—

केंद्रीय एकीकृत नाशीजीव प्रबंधन केंद्र,
“जैविक भवन”, जी.डी. मेटला विलेज,
कुतुबुल्लापुर मंडल,
हैदराबाद-500055।

[सं. 3-6/2004-हिन्दी नीति]

उमा गोयल, संयुक्त सचिव

MINISTRY OF AGRICULTURE

(Department of Agriculture and Cooperation)

New Delhi, the 23rd September, 2008

S.O. 2759.—In pursuance of sub rule (4) of Rule 10 of the Official Language (Use for purposes of the Union) Rules, 1976, the Central Government hereby notifies the following office which is under the administrative control of the Directorate of Plant Protection, Quarantine and Storage, Faridabad, an attached office of the Department of Agriculture and Cooperation, Ministry of Agriculture, whereof 80% staff have acquired working knowledge of Hindi :

Central Integrated Pest Management Centre,
“Jaivik Bhawan”, G.D. Metla Village,
Qutubullapur Mandal,
Hyderabad-500055.

[No. 3-6/2004-Hindi Neeti]

UMA GOEL, Jt. Secy.

अन्तरिक्ष विभाग

बेंगलूर, 1 सितम्बर, 2008

का.आ. 2760.—उपपति, संविधान के अनुच्छेद 309 के परन्तुक द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, और आगे अन्तरिक्ष विभाग कर्मचारी (वर्गीकरण, नियंत्रण और अपील) नियम, 1976 में संशोधन करने हेतु निम्नलिखित नियम बनाते हैं :—

- (1) इन नियमों का संक्षिप्त नाम अन्तरिक्ष विभाग कर्मचारी (वर्गीकरण, नियंत्रण और अपील) संशोधन नियम, 2008 है।
- (2) ये तत्काल से प्रवृत्त होंगे।

2. अन्तरिक्ष विभाग कर्मचारी (वर्गीकरण, नियंत्रण और अपील) नियम 1976 में संलग्न विद्यमान अनुसूची में निम्नलिखित विवरण अंत में शामिल किया जाये :—

प्रादेशिक सुदूर संवेदन केन्द्र (एन.आर.एस.सी.)

पदों का विवरण	नियुक्ति प्राधिकारी	शास्त्री लगाने वाला सक्षम प्राधिकारी और उसके द्वारा लगाये जाने वाली शास्तियाँ (नियम 8 के संदर्भ में)	अपीलीय प्राधिकारी	
(1)	(2)	(3)	(4)	(5)
समूह ख				
(i) वैज्ञानिक व तकनीकी पद	निदेशक	निदेशक	सभी	अध्यक्ष
(ii) प्रशासन व अन्य पद	नियंत्रक	नियंत्रक	सभी	निदेशक
		प्रधान, कार्मिक व सामान्य प्रशासन	(i) से (iv)	नियंत्रक
समूह ग	प्रधान, कार्मिक व सामान्य प्रशासन	प्रधान, कार्मिक व सामान्य प्रशासन	सभी	नियंत्रक
		व. प्रशा. अधिकारी	(i) से (iv)	प्रधान, कार्मिक व सामान्य प्रशासन
समूह घ	व. प्रशा. अधिकारी	व. प्रशा. अधिकारी	सभी	प्रधान, कार्मिक व सामान्य प्रशासन

[सं. 4/5/2004-IV]

बनोहर एल. वाणियर, उप सचिव

टिप्पणी : प्रधान नियम दिनांक 1-4-1976 को भारत के राजपत्र (असाधारण) के भाग-II, खण्ड-3, उप-खण्ड (ii) में सं.का.आ. 270(ई) दि. 1-4-1976 द्वारा प्रकाशित किया गया है और निम्नलिखित द्वारा संशोधन किया गया है :—

क्रम सं.	अधिसूचना सं.	दिनांक	का.आ.सं.	दिनांक
1	2	3	4	5
32.	2/10 (32)/76-1	10-02-1977	780	12-03-1977
33.	2/10 (32)/76-1	16-05-1977	2127	25-06-1977
34.	2/10 (27)/76-1	01-08-1977	2709	27-08-1977
35.	2/7 (5)/77-1	15-02-1978	585	25-02-1978
36.	2/7 (5)/77-1	27-05-1978	1780	17-06-1978
37.	2/9 (12)/74-III	16-03-1979	1178	07-04-1979

1	2	3	4	5
38.	9/4 (1)/80-III	26-05-1980	1684	21-06-1980
39.	9/4 (1)/80-III	05-09-1980	2586	27-09-1980
40.	9/4 (1)/80-III	13-10-1980	3299	29-11-1980
41.	9/4 (1)/80-III	13-10-1980	3300	29-11-1980
42.	9/4 (1)/80-III	20-12-1980	215	17-01-1981
43.	2/8 (1)/81-I	28-08-1981	2592	03-10-1981
44.	2/8 (1)/81-I	16-07-1982	3113	04-09-1982
45.	2/9 (1)/83-(V)	29-07-1985	4280	14-09-1985
46.	2/5 (1)/85-V	02-01-1986	510	08-02-1986
47.	2/9 (1)/83-I(V)	02-01-1986	511	08-02-1986
48.	2/5 (1)/86-V	17-03-1986	1309	29-03-1986
49.	2/5 (2)/86-V	20-10-1986	3874	15-11-1986
50.	2/5 (1)/90-VI	01-01-1991	99	09-02-1991
51.	2/5 (2)/86-V (VI) (बालू II)	15-11-1991	334	01-02-1991
52.	2/5 (1)/91-VI	23-10-1992	2891	21-11-1992
53.	2/5 (1)/95-V *	24-03-1995	1029	15-04-1995
54.	2/5 (1)/91-V	12-10-1995	2856	28-10-1995
55.	2/5 (1)/91-V	27-03-1995	1241	20-04-1996
56.	2/5 (1)/95-V	23-12-1997	83	10-01-1998
57.	2/5 (1)/98-V	30-06-2000	1763	05-08-2000
58.	2/5 (1)/98-V	27-12-2000	34	13-01-2001
59.	2/5 (1)/98-V	24-01-2001	254	10-02-2001
60.	2/5 (1)/98-V	18-03-2004	804	28-03-2004
61.	4/5/1/2004-V	22-06-2005	--	--
62.	4/5/1/2004-V	31-01-2006	--	--
63.	4/5/1/2004-[V	20-11-2007	--	--

DEPARTMENT OF SPACE

Bangalore, the 1st September, 2008

S.O. 2760.—In exercise of the powers conferred by the proviso to Article 309 of the Constitution, the President hereby makes the following rules further to amend the Department of Space Employees' (Classification, Control and Appeal Rules, 1976, namely :—

(1) These rules may be called the Department of Space Employees' (Classification, Control and Appeal) Amendment Rules, 2008.

(2) They shall come into force with immediate effect.

2. In the existing Schedule appended to the Department of Space Employees' (Classification, Control and Appeal) Rules, 1976, the following statement shall be included at the end :—

National Remote Sensing Centre (NRSC)

Description of post	Appointing Authority	Authority competent to impose penalties and penalties which it may impose (with reference to Rule 8)	Appellate Authority
(1)	(2)	(3)	(4)
Group B			
(i) Scientific & Technical posts	Director	Director	All
(ii) Administrative and other posts	Controller	Controller Head, Personnel and General Administration	All (i) to (iv)
Group C			
	Head, Personnel and General Administration	Head, Personnel and General Administration Sr. Administrative Officer	All (i) to (iv)
Group D			
	Sr. Administrative Officer	Sr. Administrative Officer	All

[No. 4/5/1/2004-IV]

MANOHAR L. VANNIAR, Dy. Secy.

Note : The Principal rules were published vide No. S.O. 270(E) dated 1-4-1976 in the Gazette of India (Extraordinary) Part-II, Section-3 Sub-Section (ii) dated 1-4-1976 and have been subsequently amended by :—

Sl. No.	Notification No.	Date	S. O. No.	Date
1	2	3	4	5
32.	2/10(32)/76-I	10-02-1977	780	12-03-1977
33.	2/10(32)/76-I	16-05-1977	2127	25-06-1977
34.	2/10(27)/76-I	01-08-1977	2709	27-08-1977
35.	2/7(5)/77-I	15-02-1978	585	25-02-1978
36.	2/7(5)/77-I	27-05-1978	1780	17-06-1978
37.	2/9(12)/74-III	16-03-1979	1178	17-04-1979
38.	9/4(1)/80-III	26-05-1980	1684	21-06-1980
39.	9/4(1)/80-III	05-09-1980	2586	27-09-1980
40.	9/4(1)/80-III	13-10-1980	3299	29-11-1980
41.	9/4(1)/80-III	13-10-1980	3300	29-11-1980
42.	9/4(1)/80-III	20-12-1980	215	17-01-1981
43.	2/8(1)/81-I	28-08-1981	2592	03-10-1981

1	2	3	4	5
44.	2/8(1)/81-I	16-07-1982	3113	04-09-1982
45.	2/9(1)/83-(V)	29-07-1985	4280	14-09-1985
46.	2/5(1)/85-IV	02-01-1986	510	08-02-1986
47.	2/9(1)/83-I(V)	02-01-1986	511	08-02-1986
48.	2/5(1)/86-V	17-03-1986	1309	29-03-1986
49.	2/5(2)/86-V	20-10-1986	3874	15-11-1986
50.	2/5(1)/90-VI	01-01-1991	99	09-02-1991
51.	2/5(2)/86-V (VI) (Vol. III)	15-11-1991	334	01-02-1992
52.	2/5(1)/91-VI	23-10-1992	2891	21-11-1992
53.	2/5(1)/95-V	24-03-1995	1029	15-04-1995
54.	2/5(1)/91-V	12-10-1995	2856	28-10-1995
55.	2/5(1)/91-V	27-03-1996	1241	20-04-1996
56.	2/5(1)/95-V	23-12-1997	83	10-01-1998
57.	2/5(1)/98-V	30-06-2000	1763	05-08-2000
58.	2/5(1)/98-V	27-12-2000	34	13-01-2001
59.	2/5(1)/98-V	24-01-2001	254	10-02-2001
60.	2/5(1)/98-V	18-03-2004	804	28-03-2004
61.	4/5/1/2004-V	22-06-2005	—	—
62.	4/5/1/2004-V	31-01-2006	—	—
63.	4/5/1/2004-IV	20-11-2007	—	—

कोयला मंत्रालय

नई दिल्ली, 25 सितम्बर, 2008

क्र.अ. 2761.-केंद्रीय सरकार को यह प्रतीत होता है कि इससे उपाबद्ध अनुसूची में उल्लिखित भूमि में कोयला अधिप्राप्त किये जाने की संभावना है।

अतः, अब, केंद्रीय कोयला, कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम, 1957 (1957 का 20) (जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 4 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, कोयला क्षेत्रों के लिए पूर्ववर्णन करने के अपने आदेश की सूचना दी जाती है।

इस अधिसूचना के अन्तर्गत अपने अपने क्षेत्रों के संदर्भ में, कोयला क्षेत्रों की सूचीकरण (जिसे कोयला अधिनियम 18 जून, 2008 का निर्देशन, कलकत्ता, सहाय (छत्तीसगढ़) के कार्यालय में कोयला क्षेत्रों की सूचीकरण (जिसे कोयला अधिनियम 2000) के कार्यालय में या साकथ ईस्टर्न कोलफील्ड्स लिमिटेड (राज्य अन्तर्गत), कोयला क्षेत्र, बिलासपुर-495006 (छत्तीसगढ़) के कार्यालय में किया जा सकता है।

इस अधिसूचना के अन्तर्गत अपने अपने क्षेत्रों के संदर्भ में, कोयला क्षेत्रों की सूचीकरण (जिसे कोयला अधिनियम 2000) के कार्यालय में या साकथ ईस्टर्न कोलफील्ड्स लिमिटेड, सीपत रोड, बिलासपुर-495006 (छत्तीसगढ़) को भेजे जायेंगे।

अनुसूची

बिजारी खुली खदान ब्लॉक, रायगढ़ क्षेत्र

जिला-रायगढ़, छत्तीसगढ़

रेखांक संख्या-एसईसीएल/बीएसपी/जीएम (पीएलजी)/भूमि/319 तारीख 18 जून, 2008 (पूर्वक्षण के लिए अधिसूचना भूमि दर्शाते हुए)

(क) राजस्व भूमि :—

क्रम संख्या	ग्राम का नाम	सेटलमेंट नम्बर	पट्टावारी हल्का नम्बर	तहसील	जिला	क्षेत्र हेक्टर में	टिप्पण
1.	बिजारी	228	26	घड़घोड़ा	रायगढ़	167.00	भाग
2.	पोरडा	192	27	घड़घोड़ा	रायगढ़	69.00	भाग
कुल क्षेत्र :-				236.00 हेक्टर (लगभग) या 583.156 एकड़ (लगभग)			

(ख) वन भूमि :—

क्रम संख्या	वन का नाम	वन का प्रकार	रेन्ज	खण्ड	क्षेत्र हेक्टर में	टिप्पण
1.	बिजारी	आरेन्ज फिल्ड	घड़घोड़ा	रायगढ़	11.23	भाग
कुल क्षेत्र :-			11.23 हेक्टर (लगभग) या 27.749 एकड़ (लगभग)			

कुल योग (क+ख) 236.00 + 11.23 = 247.23 हेक्टर (लगभग)

या 583.156 + 27.749 = 610.905 एकड़ (लगभग)

सीमा वर्णन :—

- क-ख रेखा ग्राम बिजारी और रूमकेरा की संयुक्त सीमा पर बिन्दु 'क' से आरंभ होती है और ग्राम बिजारी से गुजरती हुई बिन्दु 'ख' पर मिलती है।
- ख-ग रेखा ग्राम बिजारी से गुजरती हुई ग्राम बिजारी एवं पोरडा की संयुक्त सीमा में 'ग' बिन्दु पर मिलती है।
- ग-घ रेखा ग्राम बिजारी एवं पोरडा की भागतः संयुक्त सीमा से गुजरती हुई बिन्दु 'घ' पर मिलती है।
- घ-ङ-च-छ रेखा ग्राम पोरडा, बिन्दु से गुजरती हुई ग्राम पोरडा-रूमकेरा की संयुक्त सीमा पर बिन्दु 'छ' पर मिलती है।
- छ-ज रेखा ग्राम पोरडा--रूमकेरा की भागतः संयुक्त सीमा से गुजरती हुई ग्राम पोरडा, रूमकेरा एवं बिजारी की सीमा के जंक्शन पर बिन्दु 'ज' पर मिलती है।
- ज-क रेखा ग्राम बिजारी--रूमकेरा की संयुक्त सीमा से गुजरती हुई आरंभिक बिन्दु 'क' पर मिलती है।

[फा. सं. 43015/4/2008-पीआरआईडब्ल्यू-1]

एम. शहाबुद्दीन, अवर सचिव

MINISTRY OF COAL

New Delhi, the 25th September, 2008

S.O. 2761.—Whereas, it appears to the Central Government that Coal is likely to be obtained from the lands in the locality mentioned in the Schedule hereto annexed;

Now, therefore, in exercise of the powers conferred by sub-section (i) of Section 4 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957), (hereinafter referred to as the said Act), the Central Government hereby gives notice of its intention to prospect for coal therein;

The plan bearing Number SECL/BSP/GM (Plg)/Land/319 dated the 18th June, 2008 of the area covered by this notification can be inspected at the office of the Collector, Raigarh (Chhattisgarh) or at the office of the Coal Controller, 1, Council House Street, Kolkata-700001 or at the office of the South Eastern Coalfields Limited (Revenue Section), Seepat Road, Bilaspur-495006 (Chhattisgarh).

All persons interested in the land covered by this notification shall deliver all maps, Charts and other documents referred to in sub-section (7) of Section 13 of the said Act to the Officer Incharge or Head of the Department (Revenue Section), South Eastern Coalfields Limited, Seepat Road, Bilaspur-495006 (Chhattisgarh), within ninety days from the date of publication of this notification in the Official Gazette.

SCHEDULE

BIJARI OCM BLOCK, RAIGARH AREA

District-Raigarh, Chhattisgarh

Plan bearing No. SECL/BSP/C/M (P/g)/Land/319 dated the 18th June, 2008 (showing the land notified for prospecting).

A. Revenue Land :

Sl. No.	Name of village	Settlement No.	Patwari halka number	Tahsil	District	Area in hectares	Remarks
1.	Bijari	228	26	Gharghoda	Raigarh	167.00	Part
2.	Porda	192	27	Gharghoda	Raigarh	69.00	Part

Total :—236.00 hectares (Approximately)

OR 583.156 acres (Approximately)

B. Forest Land :

Sl. No.	Name of Forest	Type of Forest	Range	Division	Area in hectares	Remarks
1.	Bijari	Orange fields	Gharghoda	Raigarh	11.23	Part

Total :—11.23 hectares (Approximately)

OR 27.749 acres (Approximately)

Grant Total (A + B) - 236.00 + 11.23 = 247.23 hectares (Approximately)

OR 583.156 + 27.749 = 610.905 Acres (Approximately)

BOUNDARY DESCRIPTION :—

A-B	Line starts from point 'A' on the common boundary of village Bijari—Rumkera and passes through village Bijari and meets at point 'B'.
B-C	Line passes through village Bijari and meets at point 'C' on the common boundary of village Bijari—Porda.
C-D	Line passes along the partly common boundary of village Bijari—Porda and meets at point 'D'.
D-E-F-G	Line passes through village Porda and meets at point 'G' on the common boundary of villages Porda—Rumkera.
G-H	Line passes along partly common boundary of village Porda—Rumkera and meets at point 'H' on the junction of boundary of villages Bijari—Rumkera-Porda
H-A	Line passes along common boundary of villages Bijari—Rumkera and meets at starting point 'A'.

{F. No. 43015/8/2008-PTW-I}

M. SHAHABUDEEN, Under Secy.

नई दिल्ली, 25 सितम्बर, 2008

क्र.सं. 2762.— केन्द्रीय सरकार को यह प्रतीत होता है कि इससे उपाबद्ध अनुसूची में उल्लिखित भूमि में कोयला अधिप्राप्त किये जाने की संभावना है।

अतः, अब, केन्द्राय सरकार, कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम, 1957 (1957 का 20) (जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है) को धारा 4 की उपधारा (1) में उक्त शक्तियों का प्रयोग करते हुए, उस क्षेत्र में कोयले का पूर्वक्षण करने के अपने आशय की सूचना देती है।

इस अधिसूचना को अन्तर्गत आने वाले क्षेत्र को रेखांकित में सी.जी./8734 तारीख 10 जून, 2008 का निरीक्षण मुख्य महाप्रबंधक (गवेषण प्रभाग), मेन्टल माइन प्लानिंग एंड डिजाइन इंस्टीट्यूट ऑफ़ कोयला प्रोसेस, कॉक रोड, रॉंची या कोयला नियंत्रक, I, काउंसिल हाउस स्ट्रीट, कोलकाता के कार्यालय में या फिर कोयला, अणुशक्ति एवं पर्यावरण के कार्यालय में किया जा सकता है।

इस अधिसूचना के अन्तर्गत आने वाली भूमि में हितबद्ध सभी व्यक्ति उक्त अधिनियम की धारा 13 की उपधारा (7) में निर्दिष्ट सभी नक्शों, चार्टों और अन्य दस्तावेजों को इस अधिसूचना के प्रकाशन की तारीख से नब्बे दिन के भीतर, मुख्य महाप्रबंधक (गवेषण प्रभाग), सेन्ट्रल माइन प्लानिंग एण्ड डिजाइन इंस्टीट्यूट, गोंडवाना प्लेस, कान्के रोड, राँची को भेजेंगे।

अनुसूची

भरतवाड़ा ब्लॉक, काम्पटी कोयला क्षेत्र

जिला-नागपुर, महाराष्ट्र

रेखांक संख्यांक डीबी/8734 तारीख 10 जून, 2008

क्रम सं.	ग्राम	थाना/तहसील	पटवारी सकिल संख्या	जिला	क्षेत्रफल एकड़ में	क्षेत्रफल हेक्टेयर में	टिप्पणी
1.	बेलवाड़ा	नागपुर(ग्रा.)	2	नागपुर	326.0	132.0	भाग
2.	भरतवाड़ा	नागपुर(ग्रा.)	12	नागपुर	929.0	376.0	भाग
3.	ब्राह्मणवाड़ा	नागपुर(ग्रा.)	2	नागपुर	109.0	44.0	भाग
4.	चकीखापा	नागपुर(ग्रा.)	12	नागपुर	217.0	88.0	भाग
5.	महुरजारी	नागपुर(ग्रा.)	4	नागपुर	415.0	168.0	भाग
6.	पितेसुर	नागपुर(ग्रा.)	12	नागपुर	613.0	248.0	भाग
7.	गोधानी	नागपुर(ग्रा.)	12	नागपुर	336.0	136.0	भाग
कुल					2945.00 (लगभग)	1192.0 (लगभग)	

सीमा विवरण

- क-ख रेखा, ब्राह्मणवाड़ा ग्राम के "क" बिन्दु से आरम्भ होती है और बेलवाड़ा ग्राम के उत्तरी भाग से गुजरती हुई बिन्दु 'ख' पर मिलती है।
- ख-ग रेखा, भरतवाड़ा ग्राम के उत्तर-पूर्व की ओर मुड़कर सीधी चकीखापा ग्राम के दक्षिणी-पश्चिमी भाग से गुजरती हुई गोधानी ग्राम में 'ग' पर मिलती है।
- ग-घ रेखा पितेसुर ग्राम की ओर मुड़ती है और बिन्दु 'घ' पर मिलती है।
- घ-ङ रेखा महुरजारी ग्राम की ओर मुड़कर बिन्दु 'ङ' पर मिलती है।
- ङ-क रेखा, दिल्ली-नागपुर मुख्य रेल मार्ग को पार करती हुई ब्राह्मणवाड़ा ग्राम के 'क' बिन्दु पर मिलती है।

[फा. सं. 43015/07/2008-पीआरआईडब्ल्यू-1]

एम. शहाबुद्दीन, अवर सचिव

New Delhi, the 25th September, 2008

S.O. 2762.—Whereas, it appears to the Central Government that Coal is likely to be obtained from the lands in the locality mentioned in the Schedule hereto annexed;

Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 4 of the Coal Bearing Areas (Acquisitions and Development) Act, 1957 (20 of 1957), (hereinafter referred to as the said Act), the Central Government hereby gives notice of its intention to prospect for coal therein;

The plan number DG/8734 dated the 10th June, 2008 of the area covered by this notification can be inspected at the Office of Chief General Manager (Exploration Division), Central Mine Planning and Design Institute, Gondwana Place, Kanke Road, Ranchi or at the Office of the Coal Controller, 1, Council House Street, Kolkata or at the Office of the District Collector, Nagpur, Maharashtra.

All persons interested in the land covered by this notification shall deliver all maps, charts and other documents referred in sub-section (7) of Section 13 of the said Act to the Chief General Manager (Exploration Division), Central Mine Planning and Design Institute, Gondwana Place, Kanke Road, Ranchi within ninety days from the date of publication of this notification.

SCHEDULE
BHARATWARA BLOCK, KAMPTEE COALFIELD,
DISTRICT NAGPUR, MAHARASHTRA

Plan bearing number DG/8734 dated the 10th June, 2008

Sl. No.	Village	Tehsil	Patwari Circle Number	District	Area in Acres	Area in Hectares	Remarks
1.	Bailwara	Nagpur Rural	2	Nagpur	326.0	132.0	Part
2.	Bharatwara	Nagpur Rural	12	Nagpur	929.0	376.0	Part
3.	Bhrahmanwara	Nagpur Rural	2	Nagpur	109.0	44.0	Part
4.	Chakikhapa	Nagpur Rural	12	Nagpur	217.0	88.0	Part
5.	Mahurzari	Nagpur Rural	4	Nagpur	415.0	168.0	Part
6.	Pitesur	Nagpur Rural	12	Nagpur	613.0	248.4	Part
7.	Godhani	Nagpur Rural	12	Nagpur	336.0	136.0	Part
Total					2945.00	1192.0	
					(approximately)	(approximately)	

BOUNDARY DESCRIPTION

- A-B The Line starts at point 'A' in village Brahmanwara and passes through Northern part of Bailwara village and meets point 'B'.
- B-C The Line turn and crossed North-Eastern part of village Bharatwara and south western part of village Chakikhapa and meets points 'C' in Goghani village.
- C-D The Line turn toward Pitesur village and meets point 'D'.
- D-E The Line turn and meets point 'E' in Mahurzari village.
- E-A The Line passes through and crossed Main Railway line from Delhi to Nagpur in Mahurzari village and meets point 'A' in Brahmanwara village.

[F. No. 43015/7/2008-PRIW-1]

M. SHATLABUDEEN, Under Secy.

आदेश

नई दिल्ली, 29 सितम्बर, 2008

का.आ. 2763.—कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम 1957 (1957 का 20) (जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 9 की उप-धारा (1) के अधीन जारी भारत के राजपत्र, भाग-II, खंड 3, उप-खंड (ii) तारीख 15 सितम्बर, 2007 में प्रकाशित भारत सरकार के कोयला मंत्रालय की अधिसूचना संख्यांक का.आ. 2587, तारीख 12 सितम्बर, 2007, पर उक्त अधिसूचना से संलग्न अनुसूची में वर्णित भूमि और ऐसी भूमि जिसे इसमें इसके पश्चात् उक्त भूमि कहा गया है, के प्रकाशन में या उस पर के सभी अधिकार, उक्त अधिनियम की धारा 10 की उप-धारा (1) के अधीन, सभी विल्लंगों से मुक्त होकर, आत्यंतिक रूप से केन्द्रीय सरकार में निहित हो गए थे;

और, केन्द्रीय सरकार का यह समाधान हो गया है कि वेस्टर्न कोलफील्ड्स लिमिटेड, नागपुर (जिसे इसमें इसके पश्चात् सरकारी कम्पनी कहा गया है), ऐसे निबंधनों और शर्तों का अनुपालन करने के लिए तैयार है, जो केन्द्रीय सरकार इस निमित्त अधिरोपित करना उचित समझे;

अतः, अब, केन्द्रीय सरकार, कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम, 1957 की धारा 11 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह निर्देश देती है कि इस प्रकार निहित भूमि और उक्त भूमि में या उस पर के सभी अधिकार, तारीख 15 सितम्बर, 2007 से केन्द्रीय सरकार में इस प्रकार निहित बने रहने के बजाए, निम्नलिखित निबंधनों और शर्तों के अधीन रहते हुए, सरकारी कम्पनी में निहित होंगे, अर्थात् :—

- सरकारी कम्पनी, उक्त अधिनियम के उपबंधों के अधीन यथा अवधारित प्रतिकर, ब्याज, नुकसानियों और वैसी ही मदों की बाबत किए गए सभी संदायों की केन्द्रीय सरकार को प्रतिपूर्ति करेगी।
- शर्त (1) के अधीन कम्पनी द्वारा केन्द्रीय सरकार को संदेय रकमों का अवधारण करने के प्रयोजन के लिए एक अधिकरण का गठन किया जाएगा और ऐसे किसी अधिकरण और अधिकरण की सहायता के लिए नियुक्त व्यक्तियों के संबंध में उपगत सभी व्यय, सरकारी कम्पनी द्वारा वहन किए जाएंगे और इस प्रकार निहित उक्त भूमि में या उस पर के अधिकार के लिए या उसके संबंध में अपीलों आदि जैसी सभी विधिक कार्यवाहियों की बाबत उपगत, सभी व्यय भी, सरकारी कम्पनी द्वारा वहन किए जाएंगे।
- सरकारी कम्पनी, केन्द्रीय सरकार या उसके पदधारियों की ऐसे किसी अन्य व्यय के संबंध में क्षतिपूर्ति करेगी, जो इस प्रकार निहित उक्त भूमि में या उस पर के अधिकारों के बारे में केन्द्रीय सरकार या उसके पदधारियों द्वारा या उनके विरुद्ध किन्हीं कार्यवाहियों के संबंध में आवश्यक हों।

4. सरकारी कम्पनी को केन्द्रीय सरकार के पूर्व अनुमोदन के बिना उक्त भूमि और अधिकारों को किसी अन्य व्यक्ति को अंतरित करने की शक्ति नहीं होगी; और
5. सरकारी कम्पनी, ऐसे निर्देशों और शर्तों का पालन करेगी, जो केन्द्रीय सरकार द्वारा, जब कभी आवश्यक हो, उक्त भूमि के विशिष्ट क्षेत्रों के लिए दिए जाएँ या अधिरोपित किए जाएँ।

[सं. 43015/22/2004-पीआरआईडब्ल्यू-1 (खण्ड-II)]

एम. शाहाबुद्दीन, अवर सचिव

ORDER

New Delhi, the 29th September, 2008

S.O. 2763.—Whereas, on the publication of the notification of the Government of India, in the Ministry of Coal, number S.O. 2587 dated the 12th September, 2007, published in the Gazette of India, Part-II, Section 3, Sub-Section (ii), dated the 15th September, 2007, issued under sub-section (1) of Section 9 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957) (hereinafter referred to as the said Act), the land and all rights in or over such land described in the Schedule appended to the said notification (hereinafter referred to as the said lands) vested absolutely in the Central Government free from all encumbrances under sub-section (1) of Section 10 of the said Act;

And, whereas, the Central Government is satisfied that the Western Coalfields, Limited, Nagpur, (hereinafter referred to as the Government Company) is willing to comply with such terms and conditions as the Central Government thinks fit to impose in this behalf;

Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 11 of the Coal Bearing Areas (Acquisition and Development) Act, 1957, the Central Government hereby directs that the said lands and rights in or over the said lands so vested shall with effect from the 15th September, 2007 instead of continuing to so vest in the Central Government, shall vest in the Government Company, subject to the following terms and conditions, namely :—

1. The Government Company shall reimburse to the Central Government all payments made in respect of compensation, interest, damages and the like, as determined under the provisions of the said Act;
2. A Tribunal shall be constituted for the purpose of determining the amounts payable to the Central Government by the Government Company under conditions (1) and all expenditure incurred in connection with any such Tribunal and persons appointed to assist the Tribunal shall be borne by the Government Company and similarly, all expenditure incurred in respect of all legal proceedings like appeals, etc., for or in connection with the rights, in or over the said lands, so vesting, shall also be borne by the Government Company;
3. The Government Company shall indemnify the Central Government or its officials against any other expenditure that may be necessary in connection with any proceedings by or against the Central Government or its officials, regarding the rights in or over the said lands so vesting;
4. The Government Company shall have no power to transfer the said lands and the rights to any other person without the previous approval of the Central Government; and
5. The Government Company shall abide by such direction and conditions as may be given or imposed by the Central Government for particular areas of the said lands, as and when necessary.

[No. 43015/22/2004-PRW-I (Vol. II)]

M. SHAHABUDEEN, Under Secy.

नई दिल्ली, 29 सितम्बर, 2008

क्र.आ. 2764.—केन्द्रीय सरकार को प्रतीत होता है कि इससे उपाबद्ध अनुसूची में उल्लिखित परिक्षेत्र की भूमि में कोयला अधिप्राप्त किये जाने की संभावना है।

अतः, अब, केन्द्रीय सरकार, कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम, 1957 (1957 का 20) की धारा 4 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, उस भूमि में कोयले का पूर्वक्षण करने के अपने आशय की सूचना देती है।

इस अधिसूचना के अन्तर्गत आने वाले रेखांक सं. सी-1 (ई) III/जे आर/762-0608 तारीख 17 जून, 2008 का निरीक्षण, वेस्टर्न कोलफील्ड्स लिमिटेड (राजस्व विभाग), कोल ईस्टेट, सिविल लाईन्स, नागपुर-440001 (महाराष्ट्र) के कार्यालय में या मुख्य महाप्रबंधक (एक्सप्लोरेशन विभाग), केन्द्रीय खान योजना और डिजाइन संस्थान, गोंडवाना पॅलेस, कॉक रोड, राँची (झारखंड) के कार्यालय में या कोयला नियंत्रक, 1, कार्डसिल हाउस स्ट्रीट, कोलकत्ता के कार्यालय में या जिला कलेक्टर, धंढपुर (महाराष्ट्र) के कार्यालय में किया जा सकता है।

इस अधिसूचना के अन्तर्गत आने वाली भूमि में हितबद्ध सभी व्यक्ति उक्त अधिनियम की धारा 13 की उपधारा (7) में निर्दिष्ट सभी नक्शों, चाटों और अन्य दस्तावेजों को इस अधिसूचना के राजपत्र को प्रकाशन की तारीख से 90 दिनों के भीतर, वेस्टर्न कोलफील्ड्स लिमिटेड (राजस्व विभाग), कोल ईस्टेट, सिविल लाईन्स, नागपुर-440001 (महाराष्ट्र) को भेजेंगे।

अनुसूची
दुर्गापुर डीप एक्सटेंशन ओपनकास्ट ब्लॉक
चंद्रपुर क्षेत्र
जिला-चंद्रपुर (महाराष्ट्र)

[योजना सं. सी-1 (ई) III/जे आर/762-0608 तारीख 17 जून, 2008]

क्रम सं.	ग्राम का नाम	पटवारी सर्किल संख्या	तहसील	जिला	क्षेत्रफल (लगभग)		टिप्पणी
					हेक्टर	एकड़	
1.	सिनाला	12	चंद्रपुर	चंद्रपुर	295.78	730.90	भाग
2.	चंद्रपुर प्रभाग, चंद्रपुर आरक्षित वन		चंद्रपुर	चंद्रपुर	115.40	285.16	भाग
कुल क्षेत्र :					411.18	1016.06	
					(लगभग)	(लगभग)	

सीमा विवरण

- क-ख रेखा बिन्दु 'क' से आरम्भ होती है और नाले के केन्द्र बिन्दु से होते हुए ग्राम सिनाला और ग्राम मसाला तुकुम की सम्मिलित ग्राम सीमा से होकर जाती है फिर ग्राम वारवट और ग्राम सिनाला की सम्मिलित ग्राम सीमा के साथ-साथ होकर जाती है और बिन्दु 'ख' पर मिलती है ।
- ख-ग रेखा ग्राम सिनाला तथा आरक्षित वन कम्पाटमेंट संख्या 399, 400 की सम्मिलित ग्राम सीमा से होकर जाती है और बिन्दु 'ग' पर मिलती है ।
- ग-घ रेखा कम्पाटमेंट संख्या 400, 401 से होकर जाती है और बिन्दु 'घ' पर मिलती है ।
- घ-ङ रेखा कम्पाटमेंट संख्या 400, 401 से होकर जाती है और ग्राम सिनाला तथा आरक्षित वन की सम्मिलित ग्राम सीमा को पार करती हुई ग्राम सिनाला से होकर आगे बढ़ती है और बिन्दु 'ङ' पर मिलती है ।
- ङ-च रेखा ग्राम सिनाला से होकर आगे बढ़ती है और ग्राम सिनाला तथा आरक्षित वन की सम्मिलित सीमा को पार करती है फिर कम्पाटमेंट संख्या 400 से होकर आगे बढ़ती है और ग्राम दुर्गापुर तथा आरक्षित वन की सम्मिलित सीमा पर 'च' बिन्दु पर मिलती है ।
- च-क रेखा ग्राम दुर्गापुर तथा आरक्षित वन कम्पाटमेंट संख्या 400 की सम्मिलित सीमा से होकर आगे बढ़ती है और ग्राम दुर्गापुर तथा ग्राम सिनाला की सम्मिलित सीमा को पार करती है फिर ग्राम सिनाला से होकर आगे बढ़ती है और आरंभिक बिन्दु 'क' पर मिलती है ।

[संख्या 43015/13/2008-पी.आर.आई.डब्ल्यू-1]

एम. शहाबुद्दीन, अवर सचिव

New Delhi, the 29th September, 2008

S.O. 2764.—Whereas, it appears to the Central Government that Coal is likely to be obtained from the lands in the locality mentioned in the Schedule hereto annexed;

Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 4 of the Coal Bearing Areas (Acquisition) and Development) Act, 1957 (20 of 1957), the Central Government hereby gives notice of its intention to prospect for coal therein;

The plan bearing number C-1(E) III/JR/762-0608 dated the 17th June, 2008 of the area covered by this notification can be inspected in the office of the Western Coalfields Limited (Revenue Department), Coal Estate, Civil Lines, Nagpur-440001 (Maharashtra) or at the office of the Chief General Manager (Exploration Division), Central Mine Planning and design Institute, Gondwana Place, Kanke Road, Ranchi or at the office of the Coal Controller, 1, Council House Street, Kolkata or at the office of the District Collector, Chandrapur (Maharashtra).

All persons interested in the lands covered by this notification shall deliver all maps, Charts and other documents referred to in sub-section (7) of Section 13 of the said Act to the Officer on Special Duty (I.R.), Western Coalfields Limited, Revenue Department, Coal Estate, Civil Lines, Nagpur-440001 (Maharashtra) within ninety days from the date of publication of this notification in the Official Gazette.

SCHEDULE

DURGAPUR DEEP EXTENSION OPENCAST BLOCK
CHANDRAPUR AREA
DISTRICT CHANDRAPUR (MAHARASHTRA)

[Plan number C-1(E) III/JR/762-0608 dated the 17th June, 2008]

Sl. No.	Name of Village	Patwari circle number	Tehsil	District	Area in hectares	Area in Acres	Remarks
1	2	3	4	5	6	7	8
1.	Sinhala	12	Chandrapur	Chandrapur	295.78	730.90	Part

1	2	3	4	5	6	7	8
2.	Chandrapur Division Chandrapur Reserve Forest		Chandrapur	Chandrapur	115.40	285.16	Part
Total area					411.18 hectares (approximately) or 1016.06 acres (approximately)		

Boundary description:—

- A-B Line starts from point 'A' and passes through common village boundary of villages Sinhala and Masala Tukum through Center point of Nallah then proceeds along the common boundary of villages Warwat and Sinhala and meets at point 'B'.
- B-C Line passes through common village boundary of village Sinhala and Reserve Forest Compartment No. 399, 400 and meets at points 'C'.
- C-D Line passes through Compartment No. 400, 401 and meets at point 'D'.
- D-E Line passes through Compartment No. 401, 400 and crosses the common boundary of village Sinhala and reserve forest then passes through village Sinhala and meets at point 'E'.
- E-F Line passes through village Sinhala and crosses the common boundary of village Sinhala and reserve forest then passes through Compartment No. 400 and meets on common boundary of Reserve Forest and village Durgapur at Point 'F'.
- F-A Line passes through common boundary of village Durgapur and Reserve Forest Compartment No. 400 and crosses the common village boundary of villages Durgapur and Sinhala, then passes through village Sinhala and meets at starting Point 'A'.

[No. 43015/13/2008-PRIW-I]

M. SHAHABUDEEN, Under Secy.

नई दिल्ली, 29 सितम्बर, 2008

का.आ. 2765.—केन्द्रीय सरकार को यह प्रतीत होता है कि इससे उपाबद्ध अनुसूची में उल्लिखित परिक्षेत्र की भूमि में से कोयला अधिप्राप्त किये जाने की संभावना है।

अतः, अब, केन्द्रीय सरकार, कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम, 1957 (1957 का 20) (जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 4 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, उस भूमि में कोयले का पृर्वेक्षण करने के अपने आशय की सूचना देती है।

इस अधिसूचना के अन्तर्गत आने वाले रेखांक संख्यांक सी-1 (ई) III/एफयूआर/764-0808 तारीख 12 अगस्त, 2008 का निरीक्षण, वेस्टर्न कोलफील्ड्स लिमिटेड (राजस्व विभाग), कोल ईस्टेट, सिविल लाईन्स, नागपुर-440001 (महाराष्ट्र) के कार्यालय में या मुख्य महाप्रबंधक (एक्सप्लोरेसन), केन्द्रीय खान योजना और डिजाइन संस्थान, गोंडवाना पॅलेस, कॉक रोड, रौंजी के कार्यालय में या कोयला निर्यंत्रक, I, कार्डीसल हाऊस स्ट्रीट, कोलकाता के कार्यालय में या जिस्सा कलेक्टर, नागपुर (महाराष्ट्र) के कार्यालय में किया जा सकता है।

इस अधिसूचना के अन्तर्गत आने वाली भूमि से, हितबद्ध सभी व्यक्ति उक्त अधिनियम की धारा 13 की उपधारा (7) में निर्दिष्ट सभी नक्शों, चार्टों और अन्य दस्तावेजों को इस अधिसूचना के राजपत्र में प्रकाशन की तारीख से 90 दिनों के भीतर, वेस्टर्न कोलफील्ड्स लिमिटेड, राजस्व विभाग, कोल ईस्टेट, सिविल लाईन्स, नागपुर-440001 (महाराष्ट्र) को भेजेंगे।

अनुसूची

गोकुल ओपनकास्ट ब्लॉक

उमरेर एरिया

जिला नागपुर (महाराष्ट्र)

[रेखांक संख्यांक सी-1 (ई) III/एफयूआर/764-0808 तारीख 12 अगस्त, 2008]

क्रम सं.	ग्राम का नाम	पटवारी सकेल संख्या	तहसील	जिला	क्षेत्रफल (लगभग) हेक्टर एकड़		टिप्पणी
1	पिराया	40 क	भिवापुर	नागपुर	94.70	234.01	भाग
2	बेसुर	41	भिवापुर	नागपुर	9.53	23.55	भाग
कुल क्षेत्र :					104.23 हेक्टर (लगभग)		
					या 257.56 एकड़ (लगभग)		

सीमा वर्णन :—

क-ख: रेखा बिन्दु "क" ग्राम पिराया तथा बेसुर की सम्मिलित ग्राम सीमा से आरंभ होती है और ग्राम पिराया से होती हुई बिन्दु "ख" पर मिलती है।

- ख-ग: रेखा ग्राम पिरया से गुजरती हुई बिन्दु 'ग' पर मिलती है।
 ग-घ: रेखा ग्राम पिरया से गुजरती हुई बिन्दु 'घ' पर मिलती है।
 घ-ङ: रेखा ग्राम पिरया से गुजरती हुई ग्राम पिरया और ग्राम बेसुर को सम्मिलित ग्राम सीमा पर बिन्दु 'ङ' पर मिलती है।
 ङ-क: रेखा ग्राम बेसुर से गुजरती हुई ग्राम बेसुर और ग्राम पिरया की सम्मिलित ग्राम सीमा पर अतिरिक्त बिन्दु 'क' पर मिलती है।

[फा. सं. 439/5/14/2008-पीआरआईडब्ल्यू-1]

एम. सहायुद्दीन, अवर सचिव

New Delhi, the 29th September, 2008

S.O. 2765.—Whereas, it appears to the Central Government that Coal is likely to be obtained from the lands in the locality mentioned in the Schedule hereto annexed,

Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 4 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (26 of 1957), (hereinafter referred to as the said Act), the Central Government hereby gives notice of its intention to prospect for coal therein;

The plan bearing number C-1(E)III/FUR-764-0808 dated the 12th August, 2008 of the area covered by this notification can be inspected in the office of the Western Coalfields Limited (Revenue Department), Coal Estate, Civil Lines, Nagpur-440001 (Maharashtra) or at the office of the Chief General Manager (Exploration Division), Central Mine Planning and Design Institute, Gondwana Place, Bunkle Road, Ranchi or at the office of the Coal Controller, 1, Council House Street, Kolkata or at the office of the District Collector, Nagpur (Maharashtra).

All persons interested in the land covered by this notification shall deliver all maps, charts and other documents referred to in sub-section (7) of Section 13 of the said Act to the Officer on Special Duty (Land and Revenue), Western Coalfields Limited, Revenue Department, Coal Estate, Civil Lines, Nagpur-440001 (Maharashtra) within ninety days from the date of publication of this notification in the Official Gazette.

SCHEDULE
GOKUL OPENCAST BLOCK
UNIRER AREA

DISTRICT NAGPUR (MAHARASHTRA)

[Plan number C-1(E)III/FUR-764-0808 dated the 12th August, 2008]

Sl. No.	Name of Village	Patwari circle number	Tehsil	District	Area in hectares	Area in Acres	Remarks
1.	Piraya	40/A	Bhivapur	Nagpur	94.70	234.01	Part
2.	Besur	41	Bhivapur	Nagpur	9.53	23.55	Part
Total Area:					104.23 Hectares (Approximately) or 257.56 Acres (Approximately)		

Boundary description:-

- A-B: Line starts from point 'A' on common village boundary of villages Piraya and Besur then passes through village Piraya and meets at point 'B'.
 B-C: Line passes through village Piraya and meets at points 'C'.
 C-D: Line passes through village Piraya and meets at point 'D'.
 D-E: Line passes through village Piraya and meets on common village boundary of villages Piraya and Besur at point 'E'.
 E-A: Line passes through village Besur and meets on common village boundary of villages Besur and Piraya at

उपभोक्ता मामले, खाद्य और सार्वजनिक वितरण मंत्रालय

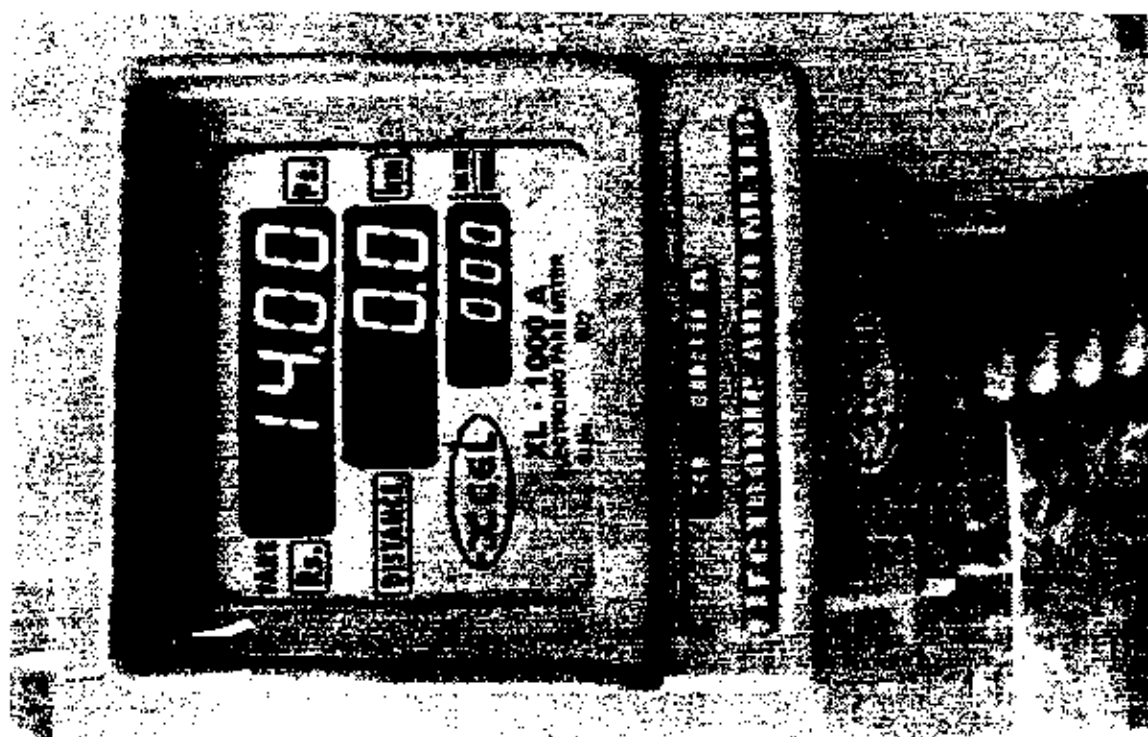
(उपभोक्ता मामले विभाग)

नई दिल्ली, 22 जुलाई, 2008

का.आ. 2766.—केन्द्रीय सरकार का, विहित प्राधिकारी द्वारा उसे प्रस्तुत रिपोर्ट पर विचार करने के पश्चात् यह समाधान हो गया है कि उक्त रिपोर्ट में वर्णित मॉडल (नीचे दी गई आकृति देखें) बाट और माप मानक अधिनियम, 1976 (1976 का 60) तथा बाट और माप मानक (मॉडलों का अनुमोदन) नियम, 1987 के उपबंधों के अनुरूप है और इस बात की संभावना है कि लगातार प्रयोग की अवधि में भी उक्त मॉडल यथार्थता बनाए रखेगा और विभिन्न परिस्थितियों में उपयुक्त सेवा प्रदान करता रहेगा;

अतः अब केन्द्रीय सरकार, उक्त अधिनियम की धारा 36 की उप-धारा (7) और उप-धारा (8) द्वारा शक्तियों का प्रयोग करते हुए मैसर्स आइ.ए.आर. माइक्रोसॉफ्ट इन्फोप्रॉडक्ट्स (प्रा.) लिमिटेड, 23, अप्टलक्ष्मी नगर, सुन्दरपुरम, कोयंबटूर-441024 तमिलनाडु द्वारा विनिर्मित "एक्स एल-1000 ए" श्रृंखला के अंकक सूचन सहित "आटो फेयर मीटर" के मॉडल का, जिसके ब्रांड का नाम "एक्सल" है (जिसे इसमें इसके पश्चात् उक्त मॉडल कहा गया है) और जिसे अनुमोदन चिह्न आई एन डी/09/08/167 समनुदेशित किया गया है, अनुमोदन प्रमाण-पत्र जारी करती है।

उक्त मॉडल "फ्लेग टाइप डिजिटल आटो फेयर मीटर (टैक्सी मीटर)" दूरी और समय मापने वाली डिवाइस के साथ लगे अंकक सूचन सहित टैक्सी मीटर का मॉडल है। यह मीटर लगातार चलाया जाता है और यात्री द्वारा देय भाड़े को यात्रा के दौरान किसी भी समय दर्शाता है। देय यात्रा भाड़ा यात्रा के दौरान एक निश्चित निर्धारित स्पीड से ऊपर एवं निर्धारित स्पीड से कम पर व्यतीत किए गए समय के दौरान तय की गई दूरी की प्रक्रिया है। मीटर की रीडिंग लाइट इमीटिंग डायोड (एलईडी) द्वारा दर्शाई जाती है। उपकरण को फेक्टर 'के' 1400 पलसेस प्रति किलोमीटर पर चलता है।



आकृति-2 मॉडल को सिलिंग करने के प्रावधान का योजनाबद्ध डायग्राम

मीटर के पृष्ठभाग में बायीं और दायीं तरफ से दो डिब्बियाँ और दो पेजों, जिन्हें सत्यमान स्लॉट और सील के लिए लीड तार से बांधा गया था, को काटकर छेड़ किए गए हैं। मीटर को सील से छेड़छाड़ के बिना खोला नहीं जा सकता। मॉडल के सिलिंग प्रावधान का विशिष्ट स्कीम डायग्राम ऊपर दिया गया है।

[फा. सं. डब्ल्यू.एम-21(71)/2008]

आर. मधुसूदन, निदेशक, विधिक मा. विभाग

MINISTRY OF CONSUMER AFFAIRS, FOOD AND PUBLIC DISTRIBUTION**(Department of Consumer Affairs)**

New Delhi, the 22nd July, 2008

S.O. 2766.—Whereas the Central Government, after considering the report submitted to it by the prescribed authority, is satisfied that the model described in the said report (see the figure given below) is in conformity with the provisions of the Standards of Weights and Measures Act, 1976 (60 of 1976) and the Standards of Weights and Measures (Approval of Models) Rules, 1987 and the said model is likely to maintain its accuracy over periods of sustained use and to render accurate service under varied conditions;

Now, therefore, in exercise of the powers conferred by sub-sections (7) and (8) of Section 36 of the said Act, the Central Government hereby issues and publishes the certificate of approval of the model of "Auto Fare Meter" with digital indication (hereinafter referred to as the said model) of "XL-1000 A" series with brand name "EXCEL" manufactured by M/s. R. AR. Micro Equipments (P) Limited, 23, Ashtalakshmi Nagar, Sundarapuram, Coimbatore-641024, Tamil Nadu and which is assigned the approval mark IND:09/08/167.

The said model of digital auto fare meter with tag type is a measuring instrument which totalizes continuously and indicate the fare, at any moment of journey, the charges payable by the passenger of a public vehicle as function of the distance traveled, and below a certain speed on the length of the time taken; this being independent of supplementary charges according to the authorized tariffs. The reading of the meter is indicated by Light Emitting Diode (LED) display. The 'K' factor of the auto meter is 1400 pulses per kilometer.

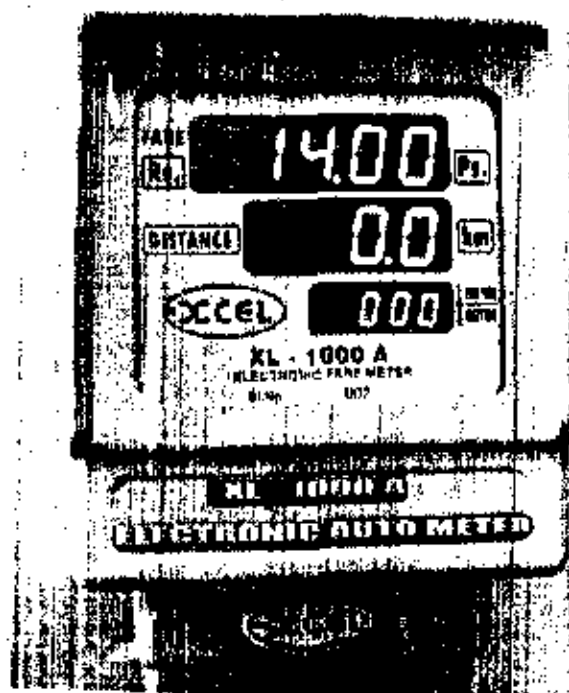


Figure-2 Sealing diagram of the model

On the rear left right side of the meter holes are made by cutting the two nuts and also the two threaded screws which are fastened by a leaded wire for receiving the verification stamp and seal. The meter cannot be opened without tampering the seal. A typical schematic diagram of sealing provision of the model is given above

(F.No. WM-21 (71) 2008)

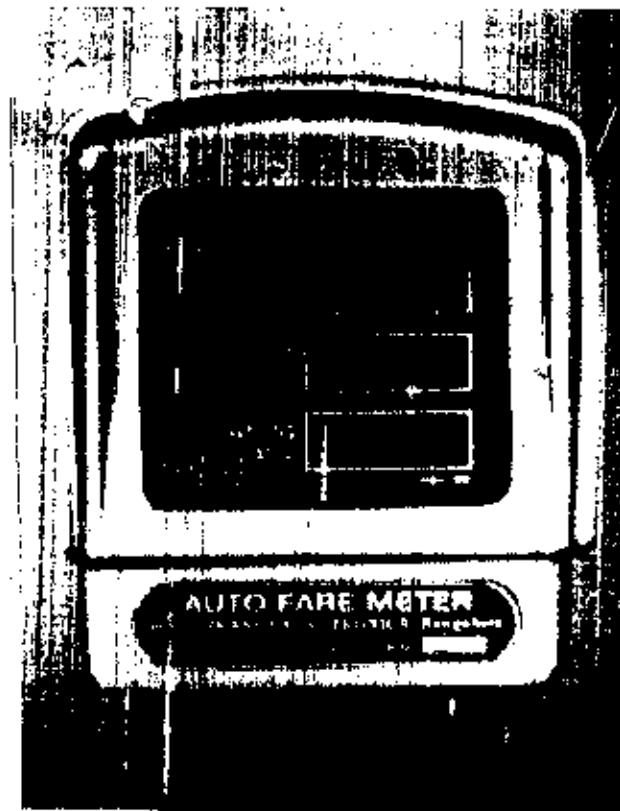
R. MATHURBOOTHAM, Director of Legal Metrology

नई दिल्ली, 22 जुलाई, 2008

का.आ. 2767.—केन्द्रीय सरकार का, विहित प्राधिकारी द्वारा उसे प्रस्तुत रिपोर्ट पर विचार करने के पश्चात् यह समाधान हो गया है कि उक्त रिपोर्ट में वर्णित मॉडल (नीचे दी गई आकृति देखें) बाट और माप मानक अधिनियम, 1976 (1976 का 60) तथा बाट और माप मानक (मॉडलों का अनुमोदन) नियम, 1987 के उपबंधों के अनुरूप हैं और इस बात की संभावना है कि लगातार प्रयोग की अवधि में भी उक्त मॉडल यथार्थता बनाए रखेगा और विभिन्न परिस्थितियों में उपयुक्त सेवा प्रदान करता रहेगा;

अतः अब केन्द्रीय सरकार, उक्त अधिनियम की धारा 36 को उप-धारा (7) और उप-धारा (8) द्वारा शक्तियों का प्रयोग करते हुए मैसर्स स्कैंडा इलेक्ट्रॉनिक्स, चं. 6, सिस्ट एंड कं., इंडस्ट्रियल लेआउट, बनावंकरो II स्टेज, बंगलोर-560070 द्वारा विनिर्मित "यू एन ओ" श्रृंखला के अंकक सूचन सहित "फ्लेग टाइप डिजिटल आटो फेयर मीटर (टैक्सी मीटर)" के मॉडल का, जिसके ब्रांड का नाम "यू एन ओ-1350" है (जिसे इसमें इसके पश्चात् उक्त मॉडल कहा गया है) और जिसे अनुमोदन चिह्न आई एन डी/09/08/132 समनुदेशित किया गया है, अनुमोदन प्रमाण-पत्र जारी करती है।

उक्त मॉडल "फ्लेग टाइप डिजिटल आटो फेयर मीटर (टैक्सी मीटर)" दूरी और समय मापने वाली डेवाइस के साथ लगे अंकक सूचन सहित टैक्सी मीटर का मॉडल है। यह मीटर लगातार योग करता जाता है और यात्री द्वारा देय माड़े को यात्रा के दौरान किसी भी समय दर्शाता है। देय यात्रा भाड़ा यात्रा के दौरान एक निश्चित निर्धारित स्पीड से ऊपर एवं निर्धारित स्पीड से कम पर व्यतीत किए गए समय के दौरान तय की गई दूरी को प्रक्रिया है। मीटर की रीडिंग लाइट इमीटिंग डायोड (एलईडी) द्वारा दर्शाई जाती है। उपकरण का फेक्टर 'के' 1350 पलसेस प्रति किलोमीटर पर चलता है।



आकृति-2 मॉडल को सिलिंग करने का उपबंध

आटो/टैक्सी किराया मीटर को कपटपूर्ण व्यवहारों के लिए खाले जाने से रोकने के लिए इसके पीछे की ओर ओपनिंग पेंच बोल्ट पर सील करने के तार पर सील लगाई जाएगी। किराया मीटर की सील को तोड़ें बिना खोला नहीं जा सकेगा। मॉडल को सील करने के उपबंध का एक प्ररूपी योजनाबद्ध डायग्राम उपरोक्त दिया गया है।

[फा. सं. डब्ल्यू.एम-21(85)/2008]

आर. माथुरवृथम, निदेशक, विधिक माप विज्ञान

New Delhi, the 22nd July, 2008

S.O. 2767.—Whereas the Central Government, after considering the report submitted to it by the prescribed authority, is satisfied that the model described in the said report (see the figure given below) is in conformity with the provisions of the Standards of Weights and Measures Act, 1976 (60 of 1976) and the Standards of Weights and Measures (Approval of Models) Rules, 1987 and the said model is likely to maintain its accuracy over periods of sustained use and to render accurate service under varied conditions;

Now, therefore, in exercise of the powers conferred by sub-sections (7) and (8) of Section 36 of the said Act, the Central Government hereby issues and publishes the certificate of approval of the model of "Flag Type Digital Auto Fare Meter (Taxi Meter)" with digital indication (hereinafter referred to as the said model) of "UNO" series with brand name "UNO-1350" manufactured by M/s. Skanda Electronics, No. 6, Sist & Co., Industrial Layout, Banashankari II Stage, Bangalore-560070 and which is assigned the approval mark IND/09/08/132;

The said model is "Flag Type Digital Auto Fare Meter (Taxi Meter)" is a measuring instrument which totalizes continuously and indicate the fare, at any moment of journey, the charges payable by the passenger of a public vehicle as function of the distance travelled, and below a certain speed on the length of the time taken; this being independent of supplementary charges according to the authorized tariffs. The reading of the meter is indicated by Light Emitting Diode (LED). The 'K' factor of the auto meter is 1350 pulse per kilometre.

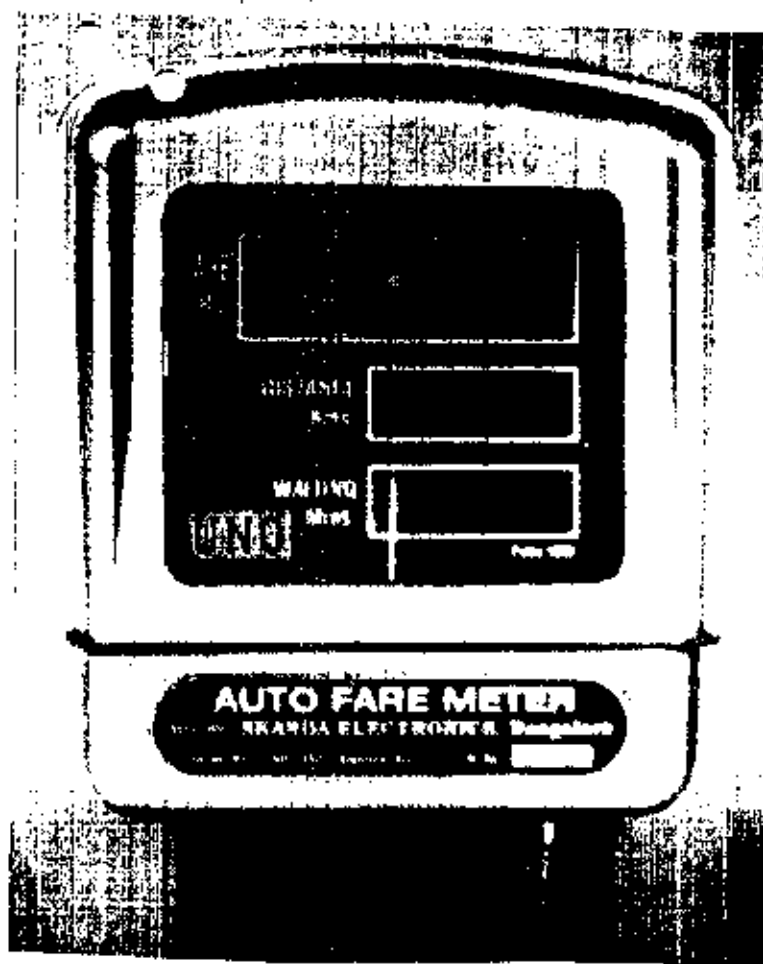


Figure-2 Sealing provision of the model

Sealing is done by affixing the sealing wire or the opening screw-bolt of the rear side of the Auto/Taxi Fare Meter to avoid fraudulent use. The fare meter cannot be opened without tampering the seal. A typical schematic diagram of sealing provision of the model is given above.

[F. No. WM-21(85)/2008]

R. MATHURBOOTHAM, Director of Legal Metrology

नई दिल्ली, 22 जुलाई, 2008

का.आ. 2768.—केन्द्रीय सरकार का, विहित प्राधिकारी द्वारा उसे प्रस्तुत रिपोर्ट पर विचार करने के पश्चात् यह समाधान हो गया है कि उक्त रिपोर्ट में वर्णित मॉडल (नीचे दी गई आकृति देखें) बाट और माप मानक अधिनियम, 1976 (1976 का 60) तथा बाट और माप मानक (मॉडलों का अनुमोदन) नियम, 1987 के उपबंधों के अनुरूप है और इस बात की संभावना है कि लगातार प्रयोग की अवधि में भी उक्त मॉडल यथार्थता बनाए रखेगा और विभिन्न परिस्थितियों में उपयुक्त सेवा प्रदान करता रहेगा;

अतः अब केन्द्रीय सरकार, उक्त अधिनियम की धारा 36 की उप-धारा (7) और उप-धारा (8) द्वारा प्रदत्त शक्तियों को प्रयोग करते हुए मैसर्स रमोन्दर सिंह एंड कम्पनी, दीप नगर, गिल रोड, लुधियाना-141 003, पंजाब द्वारा विनिर्मित मध्यम यथार्थता (यथार्थता वर्ग-III) वाले "ए टी एस" शृंखला के अंकक सूचन सहित अस्वचालित तोलन उपकरण (प्लेटफार्म प्रकार) के मॉडल का, जिसके ब्रांड का नाम "एशिया-टैक" है (जिसे इसमें इसके पश्चात् उक्त मॉडल कहा गया है) और जिसे अनुमोदन चिह्न आई एन डी /09/08/139 समनुदेशित किया गया है, अनुमोदन प्रमाण-पत्र जारी करती है।

उक्त मॉडल एक विकृत गेज प्रकार का भार सेल आधारित अस्वचालित तोलन उपकरण (प्लेटफार्म प्रकार) है। इसकी अधिकतम क्षमता 200 कि.ग्रा. और न्यूनतम क्षमता 1 कि.ग्रा. है। सत्यापन मापमान अंतराल (ई) 50 ग्रा. है। इसमें एक आधेयतुलन युक्ति है जिसका शत प्रतिशत व्यकलनात्मक धारित आधेयतुलन प्रभाव है। प्रकाश उत्सर्जक डायोड (एल ई डी) प्रदर्श तोलन परिणाम उपदर्शित करता है। उपकरण 230 वोल्ट और 50 हर्ट्ज प्रत्यावर्ती धारा विद्युत पर कार्य करता है।



मॉडल को सीलिंग करने के प्रावधान का योजनाबद्ध डायग्राम

सील करने के लिए सूचक के आधार और कवर को सूचक के सभी चार कोनों पर हेड होल के साथ कनेक्ट किया जायेगा तथा इन हेड होल पेंचों को विशेष गुणता तार के साथ कनेक्ट किया जायेगा जिसे लीड सील के साथ जोड़ा जायेगा। सूचक की सील को तोड़ें बिना खोला नहीं जा सकेगा। मॉडल को सीलबंद करने का एक प्रारूपी योजनाबद्ध डायग्राम उपरोक्त दिया गया है।

और केन्द्रीय सरकार उक्त अधिनियम की धारा 36 की उप-धारा (12) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए यह घोषणा करती है कि उक्त मॉडल के अनुमोदन के इस प्रमाण-पत्र के अंतर्गत उसी विनिर्माता द्वारा उसी सिद्धांत, डिजाइन के अनुसार और उसी सामग्री से जिससे उक्त अनुमोदित मॉडल का विनिर्माण किया गया है, विनिर्मित उसी शृंखला के वैसे ही मेक, यथार्थता और कार्यपालन के तोलन उपकरण भी होंगे जो 5 ग्रा. या उससे अधिक के "ई" मान के लिए 500 से 10,000 तक के रेंज में सत्यापन मापमान अंतराल (एन) सहित 50 कि.ग्रा. से अधिक और 5000 कि.ग्रा. तक की अधिकतम क्षमता वाले हैं और "ई" मान 1×10^4 , 2×10^4 , 5×10^4 , के हैं, जो धनात्मक या ऋणात्मक पूर्णांक या शून्य के समतुल्य हैं।

[फा. सं. डब्ल्यू एम-21(66)/2008]

आर. माधुरबुधम, निदेशक, विधिक माप विज्ञान

नई दिल्ली, 22 जुलाई, 2008

का.आ. 2769.—केन्द्रीय सरकार का, विहित प्राधिकारी द्वारा उसे प्रस्तुत रिपोर्ट पर विचार करने के पश्चात् यह समाधान हो गया है कि उक्त रिपोर्ट में वर्णित मॉडल (नीचे दी गई आकृतिदेखें) बाट और माप मानक अधिनियम, 1976 (1976 का 60) तथा बाट और माप मानक (मॉडलों का अनुमोदन) नियम, 1987 के उपबंधों के अनुरूप है और इस बात की संभावना है कि लगातार प्रयोग की अवधि में भी उक्त मॉडल यथार्थता बनाए रखेगा और विभिन्न परिस्थितियों में उपयुक्त सेवा प्रदान करता रहेगा;

अतः, अब, केन्द्रीय सरकार, उक्त अधिनियम की धारा 36 की उप-धारा (7) और उप-धारा (8) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए मैसर्स रमोन्दर सिंह एंड कम्पनी, दीप नगर, गिल रोड, सुधियाना-141 003, पंजाब द्वारा विनिर्मित मध्यम यथार्थता (यथार्थता वर्ग-III) वाले "ए-टी डब्ल्यू" शृंखला के अंकक सूचन सहित अस्वचालित तोलन उपकरण (वेब्रिज प्रकार) के मॉडल का, जिसके ब्रांड का नाम "एशिया-टैक" है (जिसे इसमें इसके पश्चात् उक्त मॉडल कहा गया है) और जिसे अनुमोदन चिह्न आई एन डी/09/08/140 समनुदेशित किया गया है, अनुमोदन प्रमाण-पत्र जारी करती है।

उक्त मॉडल एक विकृत गेज प्रकार का भार सेल आधारित अस्वचालित तोलन उपकरण (वेब्रिज प्रकार) है। इसकी अधिकतम क्षमता 50 टन है और न्यूनतम क्षमता 100 कि.ग्रा. है। सत्यापन मापमान अंतराल (ई) 5 कि.ग्रा. है। इसमें एक आधेयतुलन युक्ति है जिसका शत प्रतिशत व्यकलनात्मक धारित आधेयतुलन प्रमाण है। प्रकाश उत्सर्जक डायोड (एल ई डी) प्रदर्श तोलन परिणाम उपदर्शित करता है। उपकरण 230 वोल्ट और 50 हर्ट्ज प्रत्यावर्ती धारा विद्युत पर कार्य करता है।



मॉडल को सीलिंग करने के प्रावधान का योजनाबद्ध डायग्राम।

सील करने के लिए सूचक के आधार और कवर को सूचक के सभी चार कोनों पर हेड होल के साथ कनेक्ट किया जायेगा तथा इन हेड होल पेंचों को विशेष गुणता तार के साथ कनेक्ट किया जायेगा जिसे लीड सील के साथ जोड़ा जायेगा। सूचक को सील को तोड़े बिना खोला नहीं जा सकेगा। मॉडल को सीलबंद करने का एक प्रारूपी योजनाबद्ध डायग्राम उपरोक्त दिया गया है।

और केन्द्रीय सरकार उक्त अधिनियम की धारा 36 की उप-धारा (12) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए यह घोषणा करती है कि उक्त मॉडल के अनुमोदन के इस प्रमाण-पत्र के अंतर्गत उसी विनिर्माता द्वारा उसी सिद्धांत, डिजाइन के अनुसार और उसी सामग्री से जिससे उक्त अनुमोदित मॉडल विनिर्माण किया गया है, विनिर्मित उसी शृंखला के वैसे ही मेक, यथार्थता और कार्यपालन के तोलन उपकरण भी होंगे जो 5 ग्रा. या उससे अधिक के "ई" मान के लिए 500 से 10,000 तक के रेंज में सत्यापन मापमान अंतराल (एन) सहित 5 टन से अधिक और 200 टन तक की अधिकतम क्षमता वाले हैं और "ई" मान 1×10^4 , 2×10^4 , 5×10^4 , के हैं, जो धनात्मक या ऋणात्मक पूर्णांक या शून्य के समतुल्य हैं।

3631G1/08-4

[फा. सं. डब्ल्यू एम-21(66)/2008]

आर. माधुरबुधम, निदेशक, विधिक माप विज्ञान

New Delhi, the 22nd July, 2008

S.O. 2769.—Whereas the Central Government, after considering the report submitted to it by prescribed authority, is satisfied that the model described in the said report (see the figure given below) is in conformity with the provisions of the Standards of Weights and Measures Act, 1976 (60 of 1976) and the Standards of Weights and Measures (Approval of Models) Rules, 1987 and the said model is likely to maintain its accuracy over periods of sustained use and to render accurate service under varied conditions;

Now, therefore, in exercise of the powers conferred by sub-sections (7) and (8) of Section 36 of the said Act, the Central Government hereby issues and publishes the certificate of approval of the model of non-automatic weighing instrument (Weighbridge type) with digital indication of medium accuracy (Accuracy class-III) of series "ATW" and with brand name "ASIA-TECH" (hereinafter referred to as the said Model), manufactured by M/s. Raminder Singh & Company, Deep Nagar, Gill Road, Ludhiana-141 003, Punjab and which is assigned the approval mark IND 09/08/140:

The said model is a strain gauge type load cell based non-automatic weighing instrument (Weighbridge type) with a maximum capacity of 50 tonne and minimum capacity of 100 kg. The verification scale interval (e) is 5kg. It has a tare device with a 100 per cent subtractive retained tare effect. The Light Emitting Diode (LED) indicates the weighing results. The instrument operates on 230 Volts and 50 Hertz alternative current power supply.



Figure 2—Sealing Diagram

For sealing, base and cover of the indicator are connected with head hole screw at all the four corners of the indicator and these head hole screws are connected with special quality wire which is joined with lead seal. Indicator cannot be opened without tampering the seal. A typical schematic diagram of sealing provision of the model is given above.

Further, in exercise of the powers conferred by sub-section (12) of Section 36 of the said Act, the Central Government hereby declares that this certificate of approval of the said model shall also cover the weighing instruments of similar make, accuracy and performance of same series with maximum capacity above 5 tonne and up to 200 tonne with verification scale interval (n) in the range of 500 to 10,000 for 'e' value of 5g or more and with 'e' value of 1×10^4 , 2×10^4 or 5×10^4 , where k is a positive or negative whole number or equal to zero manufactured by the same manufacturer in accordance with the same principle, design and with the same materials with which, the said approved model has been manufactured.

JT No WM-21 (66) 2008]

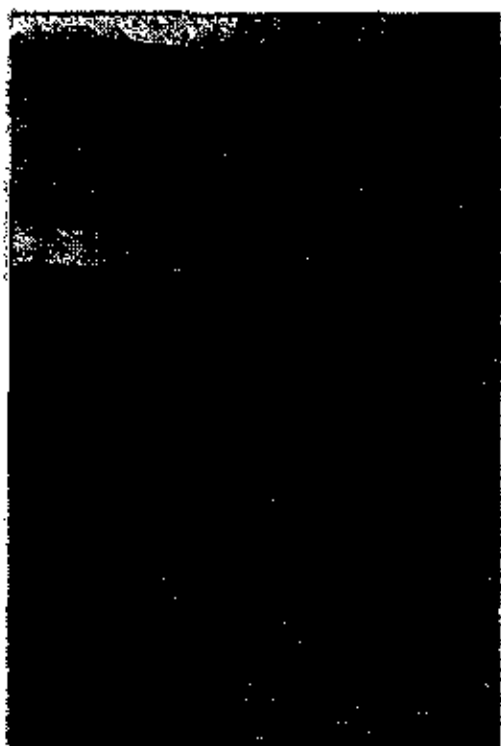
R. MATHURBOOTHAN, Director of Legal Metrology

नई दिल्ली, 22 जुलाई, 2008

का.आ. 2770.—केन्द्रीय सरकार का, विहित प्राधिकारी द्वारा उसे प्रस्तुत रिपोर्ट पर विचार करने के पश्चात् यह समाधान हो गया है कि उक्त रिपोर्ट में वर्णित मॉडल (नीचे दी गई आकृति देखें) बाट और माप मानक अधिनियम, 1976 (1976 का 60) तथा बाट और माप मानक (मॉडलों का अनुमोदन) नियम, 1987 के उपबंधों के अनुरूप है और इस बात की संभावना है कि लगातार प्रयोग की अवधि में भी उक्त मॉडल यथार्थता बनाए रखेगा और विभिन्न परिस्थितियों में उपयुक्त सेवा प्रदान करता रहेगा;

अतः अब केन्द्रीय सरकार, उक्त अधिनियम की धारा 36 की उप-धारा (7) और उप-धारा (8) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए मैसर्स सतनाम व्हे इंडस्ट्रीज, प्लॉट नं. 1185, स्ट्रीट नं. 8, धुरी लाइन के पास लुधियाना-141003, द्वारा विनिर्मित मध्यम यथार्थता (यथार्थता वर्ग-III) वाले "एस के डब्ल्यू-4" शृंखला के अंकक सूचन सहित अस्वचालित तोलन उपकरण (वेजिज प्रकार) के मॉडल का, जिसके ब्रांड का नाम "स्काईटेक" है (जिसे इसमें इसके पश्चात् उक्त मॉडल कहा गया है) और जिसे अनुमोदन चिह्न आई एन डी /09/08/179 समनुदेशित किया गया है, अनुमोदन प्रमाण-पत्र जारी करती है।

उक्त मॉडल एक विकृत गेज प्रकार का भार सेल आधारित अस्वचालित तोलन उपकरण (वेजिज प्रकार) है। इसकी अधिकतम क्षमता 30 टन है और न्यूनतम क्षमता 100 कि.ग्रा. है। सत्यापन मापमान अंतराल (ई) 5 कि.ग्रा. है। इसमें एक आधेयतुलन युक्ति है जिसका शत प्रतिशत व्यवकलनात्मक धारित आधेयतुलन प्रभाव है। प्रकारा उत्सर्जक डायोड (एल ई डी) प्रदर्श तोलन परिणाम उपदर्शित करता है। उपकरण 230 वोल्ट और 50 हर्ट्ज प्रत्यावर्ती धारा विद्युत प्रदाय पर कार्य करता है।



मॉडल को सीलिंग करने के प्रावधान का योजनाबद्ध डायग्राम।

सीलिंग के लिए, इंडिकेटर के ऊपरी कवर और बेस प्लेट में छिद्र किया जाएगा और तब इन छिद्रों में से सील को निकाला जाएगा और सील सील के साथ जोड़ा जाएगा। सील को तोड़े बिना इंडिकेटर को नहीं खोला जा सकता। मॉडल को सीलबंद करने का एक प्राकृपी योजनाबद्ध डायग्राम उपरोक्त दिया गया है।

और केन्द्रीय सरकार उक्त अधिनियम की धारा 36 की उप-धारा (12) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए यह घोषणा करती है कि उक्त मॉडल के अनुमोदन के इस प्रमाण-पत्र के अंतर्गत उसी विनिर्माता द्वारा उसी सिद्धांत, डिजाइन के अनुसार और उसी सामग्री से जिससे उक्त अनुमोदित मॉडल विनिर्माण किया गया है, विनिर्मित उसी शृंखला के वैसे ही मेक, यथार्थता और कार्यपालन के तोलन उपकरण भी होंगे जो 5 ग्रा. या उससे अधिक के "ई" मान के लिए 500 से 10,000 तक के रेंज में सत्यापन मापमान अंतराल (एन) सहित 5 टन से अधिक और 100 टन तक की अधिकतम क्षमता वाले हैं और "ई" मान 1×10^3 , 2×10^3 , 5×10^3 , के हैं, जो घनात्मक या क्रणात्मक पूर्णांक या शून्य के समतुल्य हैं।

New Delhi, the 22nd July, 2008

S.O. 2770.—Whereas the Central Government, after considering the report submitted to it by the prescribed authority, is satisfied that the model described in the said report (see the figure given below) is in conformity with the provisions of the Standards of Weights and Measures Act, 1976 (60 of 1976) and the Standards of Weights and Measures (Approval of Models) Rules, 1987 and the said model is likely to maintain its accuracy over periods of sustained use and to render accurate service under varied conditions;

Now, therefore, in exercise of the powers conferred by sub-sections (7) and (8) of Section 36 of the said Act, the Central Government hereby issues and publishes the certificate of approval of the model of non-automatic weighing instrument (Weighbridge type) with digital indication of medium accuracy (accuracy class-III) of series "SKW-4" and with brand name "SKYTECH" (hereinafter referred to as the said Model), manufactured by M/s. Sanam Weigh Industries, Plot No. 1185, Street No. 8, Nr. Dhuri Line, Ludhiana-141003 and which is assigned the approval mark IND/09/08/179;

The said model is a strain gauge type load cell based non-automatic weighing instrument (Weighbridge type) with a maximum capacity of 30 tonne and minimum capacity of 100 kg. The verification scale interval (e) is 5 kg. It has a tare device with a 100 per cent subtractive retained tare effect. The Light Emitting Diode (LED) indicates the weighing results. The instrument operates on 230 Volts and 50 Hertz alternative current power supply.

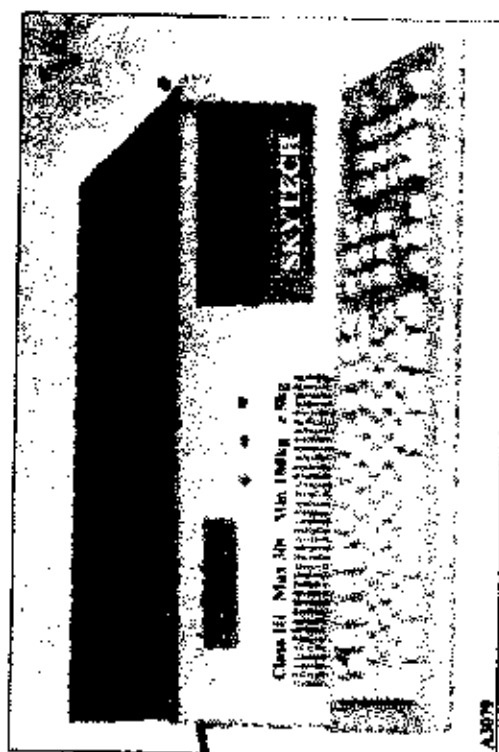


Figure 2 Sealing Arrangement

For sealing, a hole is made in the base plate and top cover of the indicator body, and then a seal wire is passed through these holes and attached with the lead seal. The indicator can not be opened unless the seal is broken. A typical schematic diagram of sealing provision of the model is given above.

Further, in exercise of the powers conferred by sub-section (12) of Section 36 of the said Act, the Central Government hereby declares that this certificate of approval of the said model shall also cover the weighing instruments of similar make, accuracy and performance of same series with maximum capacity above 5 tonne and up to 100 tonne with verification scale interval (n) in the range of 500 to 10,000 for 'e' value of 5g. or more and with 'e' value of 1×10^k , 2×10^k or 5×10^k , where k is a positive or negative whole number or equal to zero manufactured by the same manufacturer in accordance with the same principle, design and with the same materials with which, the said approved model has been manufactured.

[F. No. WM-21 (86)-2008]

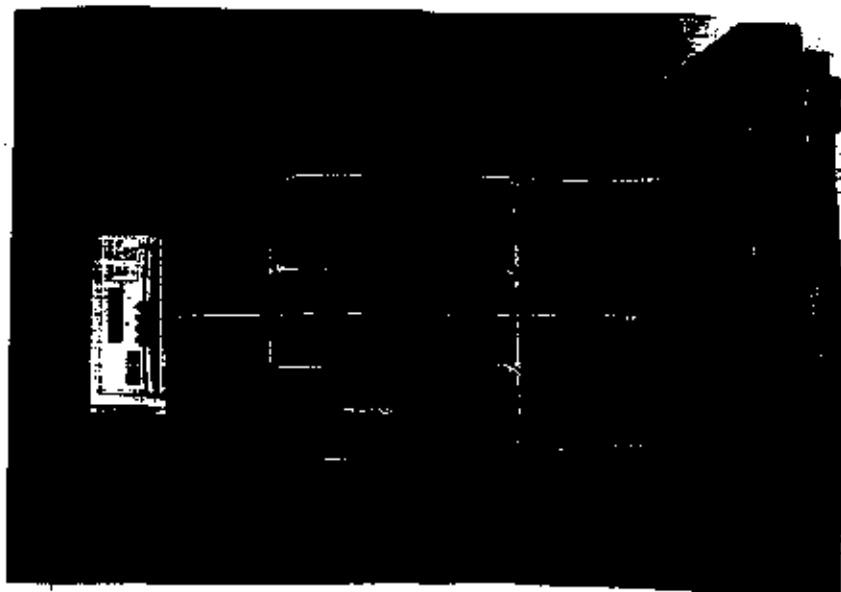
R. MATHURBOOTHAM, Director of Legal Metrology

नई दिल्ली, 25 जुलाई, 2008

का.आ. 2771.—केन्द्रीय सरकार का, विहित प्राधिकारी द्वारा उसे प्रस्तुत रिपोर्ट पर विचार करने के पश्चात् यह समाधान हो गया है कि उक्त रिपोर्ट में वर्णित मॉडल (नीचे दी गई आकृति देखें) बाट और माप मानक अधिनियम, 1976 (1976 का 60) तथा बाट और माप मानक (मॉडलों का अनुमोदन) नियम, 1987 के उपबंधों के अनुरूप है और इस बात की संभावना है कि लगातार प्रयोग की अवधि में भी उक्त मॉडल यथार्थता बनाए रखेगा और विभिन्न परिस्थितियों में उपयुक्त सेवा प्रदान करता रहेगा;

अतः अब केन्द्रीय सरकार, उक्त अधिनियम की धारा 36 की उप-धारा (7) और उप-धारा (8) द्वारा प्रदत्त शक्तियों को प्रयोग करते हुए मैसर्स बोडा स्केल इंडिया, 32-33/ए, न्यू ब्रिजपुरी, नीयर पुलिस स्टेशन, प्रीत विहार, दिल्ली-110051 द्वारा विनिर्मित मध्यम यथार्थता (यथार्थता वर्ग-III) वाले “वी एस पी” शृंखला के अस्वचालित, अंकक सूचन सहित (प्लेटफार्म प्रकार) और जिसके ब्रांड का नाम “बोडा” है (जिसे इसमें इसके पश्चात् उक्त मॉडल कहा गया है) जिसे अनुमोदन चिह्न आई एन डी /09/08/84 समनुदेशित किया गया है, अनुमोदन प्रमाण-पत्र जारी करती है।

उक्त मॉडल एक विकृत गेज प्रकार का भार सेल आधारित अस्वचालित (प्लेटफार्म प्रकार) तोलन उपकरण है। इसकी अधिकतम क्षमता 300 कि.ग्रा. है और न्यूनतम क्षमता 1 कि.ग्रा. है। सत्यापन मापमान अंतराल (ई) 50 ग्रा. है। इसमें एक आधेयतुलन युक्ति है जिसका शत प्रतिशत व्यवकलनात्मक धारित आधेयतुलन प्रभाव है। प्रकाश उत्सर्जक डायोड (एल ई डी) प्रदर्श तोलन परिणाम उपदर्शित करता है। उपकरण 230 वोल्ट और 50 हर्ट्ज प्रत्यावर्ती धारा विद्युत पर कार्य करता है।



मॉडल को सीलिंग करने के प्रावधान का योजनाबद्ध डायग्राम।

तुला स्केल के दाईं ओर कपटपूर्ण व्यवहारों के लिए खाले जाने से रोकने के लिए स्टैम्पिंग प्लेट पर सील बंद करने का पाइंट लगाया जायेगा। सील करने के तार को तुला स्केल के आधार प्लेट और ऊपरी कवर के साथ जुड़े तुला स्केल के बाईं ओर से दाईं ओर शीर्ष पूर्ण पेंच में डालते हुए सीसा सील की जायेगी। सीलों को तोड़े बिना उपकरण को खोला नहीं जा सकता। मॉडल को सीलबंद करने के उपबंध का एक प्रारूपी योजनाबद्ध डायग्राम उपरोक्त दिया गया है।

और केन्द्रीय सरकार उक्त अधिनियम की धारा 36 की उप-धारा (12) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए यह घोषणा करती है कि उक्त मॉडल के अनुमोदन के इस प्रमाण-पत्र के अंतर्गत उसी विनिर्माता द्वारा उसी सिद्धांत, डिजाइन के अनुसार और उसी सामग्री से जिससे उक्त अनुमोदित मॉडल विनिर्माण किया गया है, विनिर्मित उसी शृंखला के वैसे ही घेक, यथार्थता और कार्यपालन के तोलन उपकरण भी होंगे जो 5 ग्रा. या उससे अधिक के “ई” मान के लिए 500 से 10,000 तक के रेंज में सत्यापन मापमान अंतराल (एन) सहित 50 कि.ग्रा. से अधिक और 5000 कि.ग्रा. तक की अधिकतम क्षमता वाले हैं और “ई” मान 1×10^3 , 2×10^3 , 5×10^3 , के हैं, जो घनात्मक या ऋणात्मक पूर्णांक या शून्य के समतुल्य हैं।

[फा. सं. डब्ल्यू एम-21(36)/2008]

आर. माधुरबोधम, निर्देशक, विधिक माप विज्ञान

Item No. 1 On 25th July, 2008

S.O. 2771.—Whereas the Central Government, after considering the report submitted to it by the prescribed authority, is satisfied that the model described in the said report (see the figure given below) is in conformity with the provisions of the Standards of Weights and Measures Act, 1976 (60 of 1976) and the Standards of Weights and Measures (Approval of Models) Rules, 1987 and that the model is likely to maintain its accuracy over periods of sustained use and to render accurate service under normal circumstances;

Now, therefore, in exercise of the powers conferred by sub-sections (7) and (8) of Section 36 of the said Act, the Central Government hereby issues and publishes the certificate of approval of the model of non-automatic weighing instrument (Platform type) with digital indicator, of high accuracy (accuracy class-II) of series "VSP" and with brand name "VODA" (hereinafter referred to as the said model) manufactured by M/s. Voda Scale India, 32-33-A, New Brijpuri, Near Police Station, Preet Vihar, Delhi-110021, and hereby assigns the approval mark JN10021884.

The said model is a strong gauge type, of fixed non-automatic weighing instrument (Platform type) with a maximum capacity of 300 kg. and minimum capacity of 50 kg. The verification scale interval is 50 g. It has a tare device with a 100 per cent subtractive tare function. The instrument has a Light Emitting Diode (LED) indicator for weighing results. The instrument operates on 230 Volts and 50 Hz alternating current power supply.

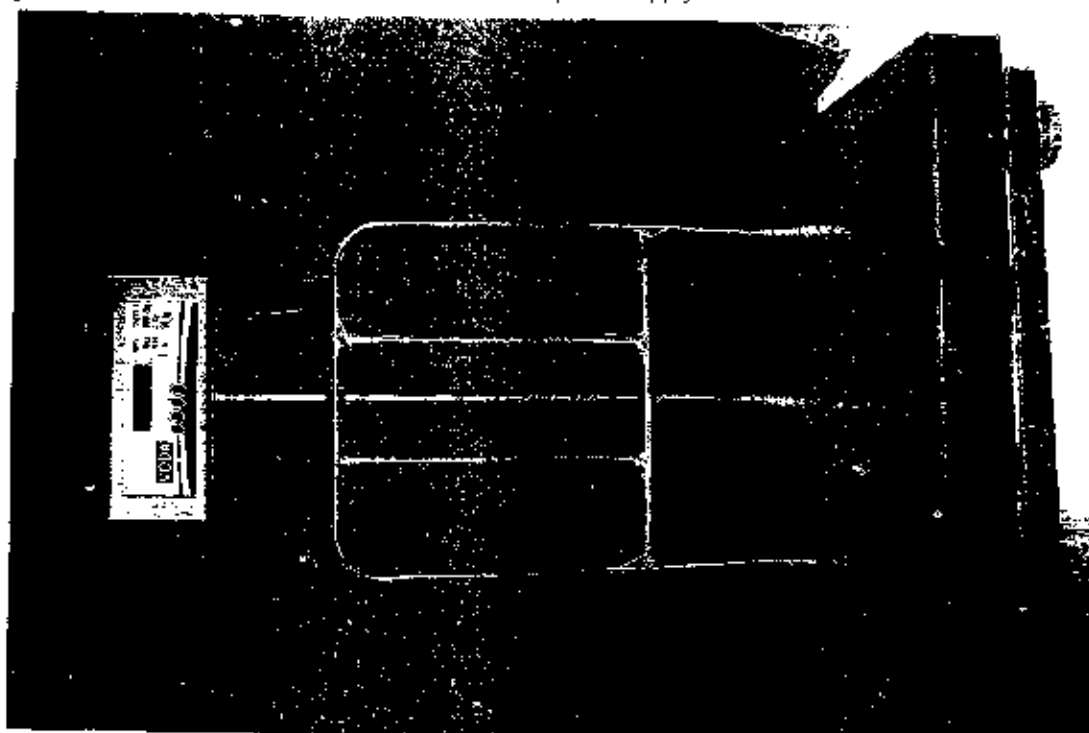


Figure 2: Sealing provision of indicator of model

Sealing point is affixed on the stamping plate to avoid fraudulent use at the right side of the indicator. Sealing wire is passing through the head whole screw right to left side of the indicator connected with the base plate and upper cover of the indicator and then lead seal is applied. The indicator can not be opened without breaking the seals. A typical schematic diagram of sealing provision of the model is given above.

Further, in exercise of the powers conferred by sub-section (12) of Section 36 of the said Act, the Central Government hereby declares that this certificate of approval of the said model shall also cover the weighing instruments of similar make, accuracy and performance of same series with maximum capacity above 50 kg. and up to 5000 kg. with verification scale interval (n) in the range of 500 to 10,000 for 'e' value of 5g. or more and with 'e' value of 1×10^1 , 2×10^1 or 5×10^1 , where 'k' is a positive or negative whole number or equal to zero manufactured by the same manufacturer in accordance with the same principle, design and with the same materials with which, the said approved model has been manufactured.

[F. No. WM-21 (36) 2008]

R. MATHURBOOTHAM, Director of Legal Metrology

नई दिल्ली, 25 जुलाई, 2008

का.आ. 2772.—केन्द्रीय सरकार का, विहित प्राधिकारी द्वारा उसे प्रस्तुत रिपोर्ट पर विचार करने के पश्चात् यह समाधान हो गया है कि उक्त रिपोर्ट में वर्णित मॉडल (नीचे दी गई आकृति देखें) बाट और माप मानक अधिनियम, 1976 (1976 का 60) तथा बाट और माप मानक (मॉडलों का अनुमोदन) नियम, 1987 के उपबंधों के अनुरूप है और इस बात की संभावना है कि लगातार प्रयोग की अवधि में भी उक्त मॉडल यथार्थता बनाए रखेगा और विभिन्न परिस्थितियों में उपयुक्त सेवा प्रदान करता रहेगा;

अतः अब केन्द्रीय सरकार, उक्त अधिनियम की धारा 36 की उप-धारा (7) और उप-धारा (8) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए मैसर्स वोडा स्केल इंडिया, 32-33/ए, न्यू ब्रिजपुरी, नीयर पुलिस स्टेशन, ग्रीत विहार, दिल्ली-110051 द्वारा विनिर्मित उच्च यथार्थता (यथार्थता वर्ग-II) के "वी एस जे" शृंखला के अस्वचालित, अंकक सूचन सहित (टेबलटाप प्रकार) और जिसके ब्रांड का नाम "वोडा" है (जिसे इसमें इसके पश्चात् उक्त मॉडल कहा गया है) जिसे अनुमोदन चिह्न आई एन डी/09/08/82 समनुदेशित किया गया है, अनुमोदन प्रमाण-पत्र जारी करती है।

उक्त मॉडल एक विकृत गेज प्रकार का भार सेल आधारित अस्वचालित तोलन उपकरण है। इसकी अधिकतम क्षमता 30 कि.ग्रा. है और न्यूनतम क्षमता 250 ग्रा. है। सत्यापन मापमान अंतराल (ई) 5 ग्रा. है। इसमें एक आधेयतुलन युक्ति है जिसका शत प्रतिशत व्यवकलनात्मक धारित आधेयतुलन प्रभाव है। प्रकाश उत्सर्जक डायोड (एल ई डी) प्रदर्श तोलन परिणाम उपदर्शित करता है। उपकरण 230 वोल्ट और 50 हर्ट्ज प्रत्यावर्ती धारा विद्युत पर कार्य करता है।



मॉडल को सीलिंग करने के प्रावधान का योजनाबद्ध डायग्राम

तुला स्केल के दाईं ओर कपरपूर्ण व्यवहारों के लिए खोले जाने से रोकने के लिए स्टाम्पिंग प्लेट पर सील बंद करने का फाइट लगाया जाएगा। सील करने के तार को तुला स्केल के आधार प्लेट और ऊपरी कवर के साथ जुड़े तुला स्केल के बाईं ओर से दाईं ओर शीर्ष पूर्ण पंच में डालते हुए सीसा सील का जायेगी। सीलों को तोड़े बिना उपकरण को खोला नहीं जा सकेगा। मॉडल को सीलबंद करने के उपबंध का एक प्ररूपी योजनाबद्ध डायग्राम उपरोक्त दिया गया है।

और केन्द्रीय सरकार उक्त अधिनियम की धारा 36 की उप-धारा (12) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए यह घोषणा करती है कि उक्त मॉडल के अनुमोदन के इस प्रमाण-पत्र के अंतर्गत उसी विनिर्माता द्वारा उसी सिद्धांत, डिजाइन के अनुसार और उसी सामग्री से जिससे उक्त अनुमोदित मॉडल का विनिर्माण किया गया है, विनिर्मित उसी शृंखला के वैसे ही मेक, यथार्थता और कार्यपालन के तोलन उपकरण भी होंगे जो 1 मि.ग्रा. से 50 मि.ग्रा. तक के "ई" मान के लिए 100 से 50,000 तक के रेंज में सत्यापन मापमान अंतराल (एन) और 100 मि.ग्रा. या उससे अधिक के "ई" मान के लिए 5000 से 50,000 तक की रेंज में सत्यापन मापमान अंतराल (एन) सहित 50 कि.ग्रा. तक की अधिकतम क्षमता वाले हैं और "ई" मान 1×10^4 , 2×10^4 , 5×10^4 , के हैं, जो धनात्मक या ऋणात्मक पूर्णांक या शून्य के समतुल्य हैं।

[फा. सं. डब्ल्यू.एम-21(36)/2008]

आर. माथुरबुधम, निदेशक, विधिक माप विज्ञान

New Delhi, the 25th July, 2008

S.O. 2772.—Whereas the Central Government, after considering the report submitted to it by the prescribed authority, is satisfied that the model described in the said report (see the figure given below) is in conformity with the provisions of the Standards of Weights and Measures Act, 1976 (60 of 1976) and the Standards of Weights and Measures (Approval of Models) Rules, 1987 and the said model is likely to maintain its accuracy over periods of sustained use and to render accurate service under varied conditions:

Now, therefore, in exercise of the powers conferred by sub-sections (7) and (8) of Section 36 of the said Act, the Central Government hereby issues and publishes the certificate of approval of the model of non-automatic weighing instrument (Table top type) with digital indication of high accuracy (Accuracy class-II) of series "VSD" and with brand name "VODA" (hereinafter referred to as the said Model), manufactured by M/s. Voda Scale India, 32-33-A, New Brijpuri, Near Police Station, Preet Vihar, Delhi-110051 and which is assigned the approval mark IND 09/08 S.I.

The said model is a strain gauge type load cell based non-automatic weighing instrument with a maximum capacity of 30kg. and minimum capacity of 250g. The verification scale interval (e) is 5g. It has a tare device with a 100 per cent subtractive retained tare effect. The Light Emitting Diode (LED) display indicates the weighing results. The instrument operates on 230 Volts and 50 Hertz alternative current power supply.



Schematic diagram of the sealing provision

Sealing point is affixed on the stamping plate to avoid fraudulent use at the right of side of the weighing scale. Sealing wire is passing through the head whole screw right to left side of the weighing scale connected with the base plate and upper cover of the weighing scale and then lead wire is applied. The instrument cannot be opened without breaking the seals. A typical schematic diagram of sealing provision of the model is given above.

Further, in exercise of the powers conferred by sub-section (12) of Section 36 of the said Act, the Central Government hereby declares that this certificate of approval of the said model shall also cover the weighing instruments of similar make, accuracy and performance of same series with maximum capacity upto 30kg. with verification scale interval (n) in the range of 100 to 50,000 for 'e' value of 1mg to 50mg and with verification scale interval (n) in the range of 5000 to 50,000 for 'e' value of 100mg or more and with 'e' value of 1×10^k , 2×10^k or 5×10^k , where k is a positive or negative whole number or equal to zero manufactured by the same manufacturer in accordance with the same principal design and with the same materials with which, the said approved model has been manufactured.

[F. No. WM-21(36) 2008]

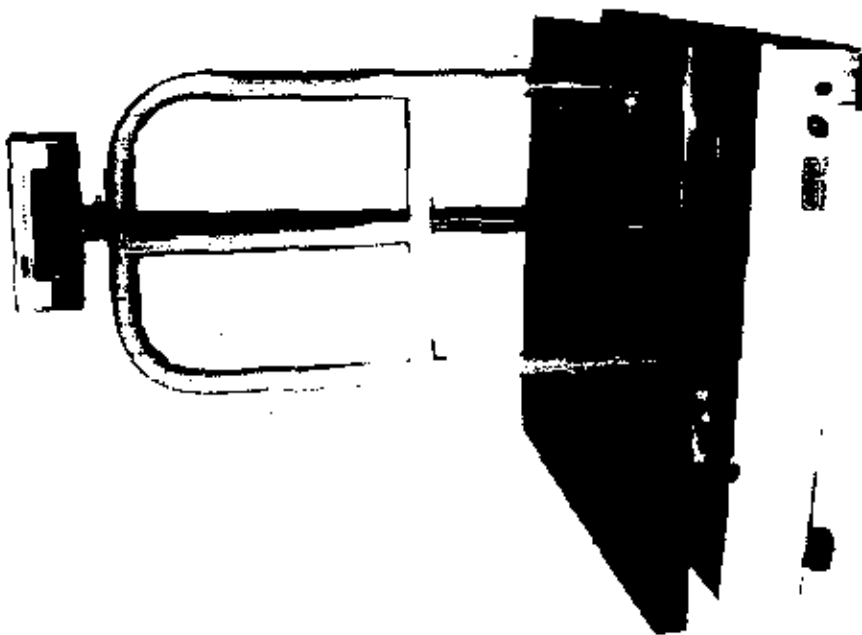
R. MATHURBOOTHAM, Director of Legal Metrology

नई दिल्ली, 25 जुलाई, 2008

का.आ. 2773,—केन्द्रीय सरकार का, विहित प्राधिकारी द्वारा उसे प्रस्तुत रिपोर्ट पर विचार करने के पश्चात् यह समाधान हो गया है कि उक्त रिपोर्ट में वर्णित मॉडल (नीचे दी गई आकृति देखें) बाट और माप मानक अधिनियम, 1976 (1976 का 60) तथा बाट और माप मानक (मॉडलों का अनुमोदन) नियम, 1987 के उपबंधों के अनुरूप है और इस बात की संभावना है कि लगातार प्रयोग की अवधि में भी उक्त मॉडल यथार्थता बनाए रखेगा और विभिन्न परिस्थितियों में उपयुक्त सेवा प्रदान करता रहेगा;

अतः अब, केन्द्रीय सरकार, उक्त अधिनियम की धारा 36 की उप-धारा (7) और उप-धारा (8) द्वारा प्रदत्त शक्तियों को प्रयोग करते हुए मैसर्स ओमेगा इलेक्ट्रॉनिक स्कैल कं. लि., 29-बी, इलेक्ट्रॉनिक्स काम्प्लेक्स, चम्पाघाट तहसील, जिला सोलन, हिमाचल प्रदेश द्वारा विनिर्मित मध्यम यथार्थता (यथार्थता वर्ग-III) वाले "ओ पी डब्ल्यू" शृंखला के अस्वचालित, अंकक सूचन सहित अस्वाचालित तोलन उपकरण (प्लेटफार्म प्रकार) के मॉडल का, जिसके ब्रांड का नाम "ओमेगा" है (जिसे इसमें इसके पश्चात् उक्त मॉडल कहा गया है) जिसे अनुमोदन चिह्न आई एम डी/09/08/176 समनुदेशित किया गया है, अनुमोदन प्रमाण-पत्र जारी करती है।

उक्त मॉडल एक विकृत गेज प्रकार का मार सेल आधारित अस्वचालित तोलन उपकरण (प्लेटफार्म प्रकार) है। इसकी अधिकतम क्षमता 1000 कि.ग्रा. है और न्यूनतम क्षमता 4 कि.ग्रा. है। सत्यापन मापमान अंतराल (ई) 200 ग्रा. है। इसमें एक आधेयतुलन युक्ति है जिसका शत प्रतिशत व्यवकलनात्मक धारित आधेयतुलन प्रभाव है। प्रकाश उत्सर्जक डायोड (एल ई डी) प्रदर्श तोलन परिणाम उपरक्षित करता है। उपकरण 230 वोल्ट और 50 हर्ट्ज प्रत्यावर्ती धारा विद्युत पर कार्य करता है।



मॉडल को सोलिंग करने के प्रावधान का योजनाबद्ध डायग्राम

तुला को सोल करने के लिए, बाईं ओर से बाहरी कवर और तल प्लेट को काटते हुए दो छेद किए जायेंगे तथा स्टाम्प सील का सत्यापन प्राप्त करने के लिए इन्हें सीसेदार तार से कसा जायेगा। उपकरण की सील को तोड़े बिना खोला नहीं जा सकेगा। मॉडल को सोलबंद करने का एक प्रारूपी योजनाबद्ध डायग्राम उपरोक्त दिया गया है।

और केन्द्रीय सरकार उक्त अधिनियम की धारा 36 की उप-धारा (12) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए यह घोषणा करती है कि उक्त मॉडल के अनुमोदन के इस प्रमाण-पत्र के अंतर्गत उसी विनिर्माता द्वारा उसी सिद्धांत, डिजाइन के अनुसार और उसी सामग्री से जिससे उक्त अनुमोदित मॉडल विनिर्माण किया गया है, विनिर्मित उसी शृंखला के वैसे ही मेक, यथार्थता और कार्यपालन के तोलन उपकरण भी होंगे जो 5 ग्रा. या उससे अधिक के "ई" मान के लिए 500 से 10,000 तक के रेंज में सत्यापन मापमान अंतराल (एन) सहित 50 कि.ग्रा. से अधिक और 5000 कि.ग्रा. तक की अधिकतम क्षमता वाले हैं और "ई" मान 1×10^3 , 2×10^3 , 5×10^3 , के हैं, जो धनात्मक या ऋणात्मक पूर्णांक या शून्य के समतुल्य हैं।

[फा. सं. डब्ल्यू.एम.-21 (47)/2008]

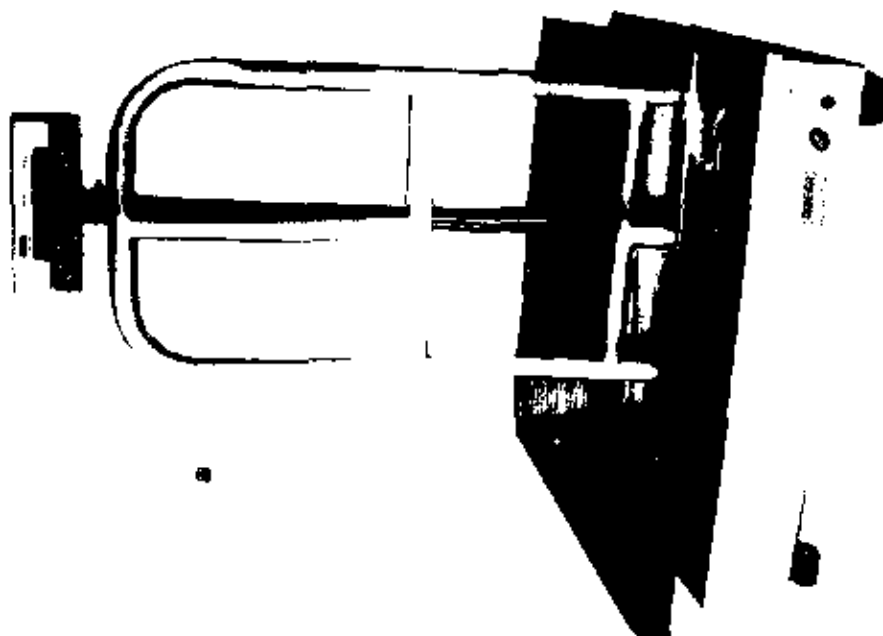
आर. भाथुरबूथम, निदेशक, विधिक माप विज्ञान

New Delhi, the 25th July, 2008

S.O. 2773.—Whereas the Central Government, after considering the report submitted to it by the prescribed authority, is satisfied that the model described in the said report (see the figure given below) is in conformity with the provisions of the Standards of Weights and Measures Act, 1976 (60 of 1976) and the Standards of Weights and Measures (Approval of Models) Rules, 1987 and the said model is likely to maintain its accuracy over periods of sustained use and to render accurate service under varied conditions;

Now, therefore, in exercise of the powers conferred by sub-sections (7) and (8) of Section 36 of the said Act, the Central Government hereby issues and publishes the certificate of approval of the model of non-automatic weighing instrument (Platform type) with digital indication of medium accuracy (accuracy class-III) of series "OPW" and with brand name "OMEGA" (hereinafter referred to as the said Model), manufactured by M/s. Omega Electronic Scale Co. Ltd., 29-B, Electronics Complex, Chambaghat Tehsil, Dist. Solan, H.P. and which is assigned the approval mark IND-09-08-176;

The said model is a strain gauge type load cell based non-automatic weighing instrument (Platform type) with a maximum capacity of 1000 kg. and minimum capacity of 4 kg. The verification scale interval (e) is 200g. It has a tare device with a 100 per cent subtractive retained tare effect. The Light Emitting Diode (LED) indicates the weighing results. The instrument operates on 230 Volts and 50 Hertz alternative current power supply.



Sealing provision of the indicator of the model

For sealing the indicator, from left side two holes are made by cutting the outer cover and bottom plate and fastened by a leaded wire for receiving the verification stamp seal. The instrument can not be opened without tampering the seal. A typical schematic diagram of sealing provision of the model is given above.

Further, in exercise of the powers conferred by sub-section (12) of Section 36 of the said Act, the Central Government hereby declares that this certificate of approval of the said model shall also cover the weighing instruments of similar make, accuracy and performance of same series with maximum capacity above 50 kg. and upto 5000 kg. with verification scale interval (n) in the range of 500 to 10,000 for ' e ' value of 5g or more and with ' e ' value of 1×10^k , 2×10^k or 5×10^k , where k is a positive or negative whole number or equal to zero manufactured by the same manufacturer in accordance with the same principle, design and with the same materials with which, the said approved model has been manufactured

[F. No. WM-21(47) 2008]

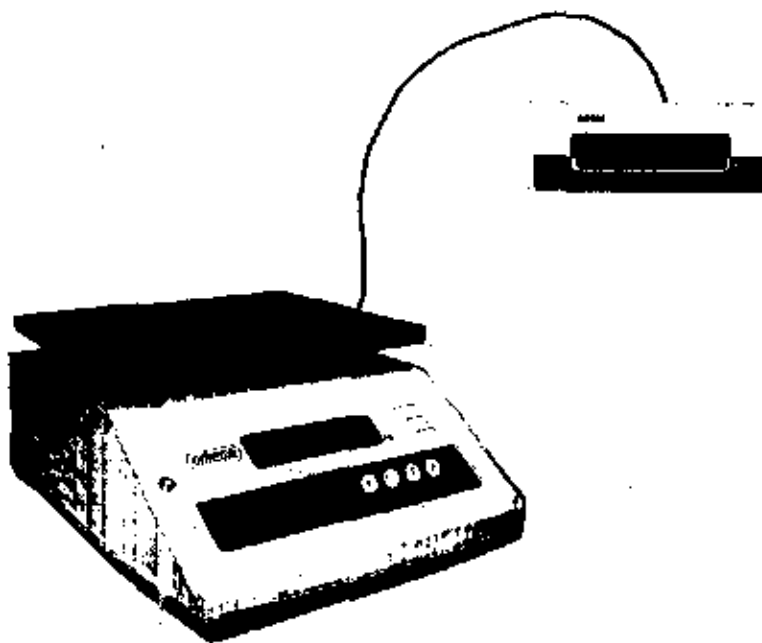
R. MATHURBOOTHAM, Director of Legal Metrology

नई दिल्ली, 25 जुलाई, 2008

का.आ. 2774.—केन्द्रीय सरकार का, विहित प्राधिकारी द्वारा उसे प्रस्तुत रिपोर्ट पर विचार करने के पश्चात् यह समाधान हो गया है कि उक्त रिपोर्ट में वर्णित मॉडल (नीचे दी गई आकृति देखें) बाट और माप मानक अधिनियम, 1976 (1976 का 60) तथा बाट और माप मानक (मॉडलों का अनुमोदन) नियम, 1987 के उपबंधों के अनुरूप है और इस बात की संभावना है कि लगातार प्रयोग की अवधि में भी उक्त मॉडल यथार्थता बनाए रखेगा और विभिन्न परिस्थितियों में उपयुक्त सेवा प्रदान करता रहेगा;

अतः, अब, केन्द्रीय सरकार, उक्त अधिनियम की धारा 36 की उप-धारा (7) और उप-धारा (8) द्वारा शक्तियों को प्रयोग करते हुए मैसर्स ओमेगा इलेक्ट्रॉनिक्स स्केल कं. लि., 29-बी, इलेक्ट्रॉनिक्स काम्प्लेक्स, चम्पाघाट तहसील, जिला सोलन, हिमाचल प्रदेश द्वारा विनिर्मित मध्यम यथार्थता (यथार्थता वर्ग-II) वाले "ओ टी डब्ल्यू" शृंखला के अंकक सूचन सहित अस्वचालित तोलन उपकरण (टेबल टॉप प्रकार) के मॉडल का, जिसके ब्रांड का नाम "ओमेगा" है (जिसे इसमें इसके पश्चात् उक्त मॉडल कहा गया है) जिसे अनुमोदन चिह्न आई एन डी/09/08/175 समनुदेशित किया गया है, अनुमोदन प्रमाण-पत्र जारी करती है।

उक्त मॉडल एक विकृत गेज प्रकार का धार सेल आधारित अस्वचालित तोलन उपकरण (टेबल टॉप प्रकार) है। इसकी अधिकतम क्षमता 10 कि.ग्रा. है और न्यूनतम क्षमता 40 ग्रा. है। स्थापन मापमान अंतराल (ई) 2 ग्रा. है। इसमें एक आधेयतुलन युक्ति है जिसका शाल प्रतिशत व्यवकलनात्मक धारित आधेयतुलन प्रभाव है। प्रकाश उत्सर्जक डायोड (एल ई डी) प्रदर्श तोलन परिणाम उपदर्शित करता है। उपकरण 230 वोल्ट और 50 हर्ट्ज प्रत्यावर्ती धारा विद्युत प्रदाय पर कार्य करता है।



मॉडल को सीलिंग करने के प्रावधान का योजनाबद्ध डायग्राम

तुला को सील करने के लिए, बाई ओर से बाहरी कवर और तल प्लेट को काटते हुए दो छेद किए जायेंगे तथा स्टांप सोल का स्थापन प्राप्त करने के लिए इन्हें सीसेदार तार से कसा जावेगा। उपकरण की सील की तोड़े बिना खोला नहीं जा सकेगा। मॉडल को सीलबंद करने का एक प्रारूपी योजनाबद्ध डायग्राम उपरोक्त दिया गया है।

और केन्द्रीय सरकार उक्त अधिनियम की धारा 36 की उप-धारा (12) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए यह घोषणा करती है कि उक्त मॉडल के अनुमोदन के इस प्रमाण-पत्र के अंतर्गत उसी विनिर्माता द्वारा उसी सिद्धांत, डिजाइन के अनुसार और उसी सामग्री से जिससे उक्त अनुमोदित मॉडल विनिर्माण किया गया है, विनिर्मित उसी शृंखला के वैसे ही मेक, यथार्थता और काब्यपालन के तोलन उपकरण भी होंगे जो 100 मि.ग्रा. से 2 ग्रा. तक के "ई" मान के लिए 100 से 10,000 तक की रेंज में स्थापन मापमान अंतराल (एन) और 5 ग्रा. या उससे अधिक के "ई" मान के लिए 500 से 10,000 तक के रेंज में स्थापन मापमान अंतराल (एन) सहित 50 कि.ग्रा. की अधिकतम क्षमता वाले हैं और "ई" मान 1×10^4 , 2×10^4 , 5×10^4 , के हैं, जो धनात्मक या ऋणात्मक पूर्णांक या शून्य के समतुल्य हैं।

[फा. नं. डब्ल्यू एम-21(47)/2008]

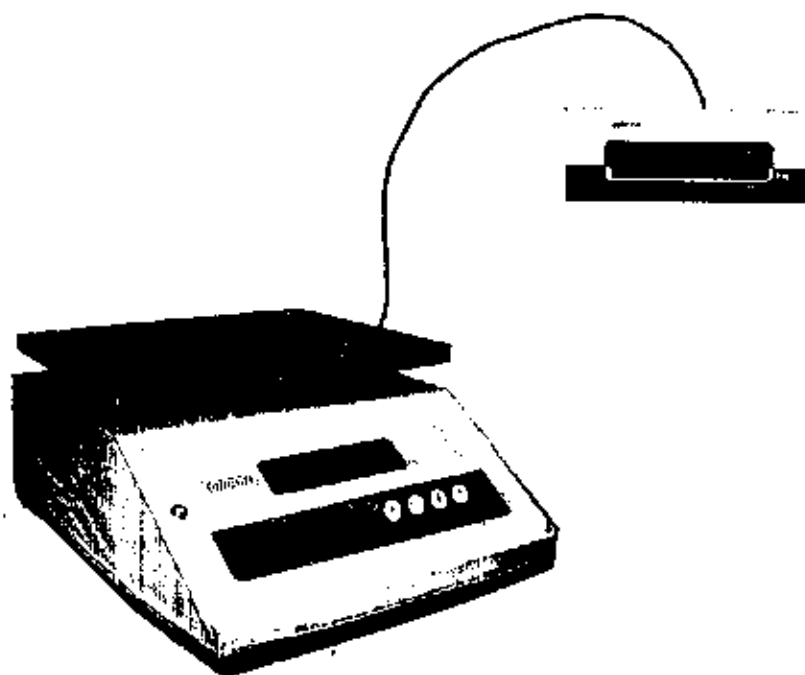
आर. माधुबूथम निदेशक, विधिक प्रा. नि.प.

New Delhi, the 25th July, 2008

S.O. 2774.—Whereas the Central Government, after considering the report submitted to it by the prescribed authority, is satisfied that the model described in the said report (see the figure given below) is in conformity with the provisions of the Standards of Weights and Measures Act, 1976 (60 of 1976) and the Standards of Weights and Measures (Approval of Models) Rules, 1987 and the said model is likely to maintain its accuracy over periods of sustained use and to render accurate service under varied conditions:

Now, therefore, in exercise of the powers conferred by sub-sections (7) and (8) of Section 36 of the said Act, the Central Government hereby issues and publishes the certificate of approval of the model of non-automatic weighing instrument (Table top type) with digital indication of medium accuracy (Accuracy class-III) of series "OTW" and with brand name "OMEGA" (hereinafter referred to as the said Model), manufactured by M/s. Omega Electronic Scale Co. Ltd., 29-B, Electronics Complex, Chambaghat Tehsil, Dist. Solan, H.P. and which is assigned the approval mark IND/09-08/175:

The said model is a strain gauge type load cell based non-automatic weighing instrument (Table top type) with a maximum capacity of 10kg. and minimum capacity of 40g. The verification scale interval (e) is 2g. It has a tare device with a 100 per cent subtractive retained tare effect. The Light Emitting Diode (LED) display indicates the weighing results. The instrument operates on 230 Volts and 50 Hertz alternative current power supply.



Sealing provision of the indicator of model.

For sealing the balance, from left side two holes are made by cutting the outer cover and bottom plate and fastened by a loaded wire for receiving the verification stamp seal. The instrument can not be open without tampering the seal. A typical schematic diagram of sealing provision of the model is given above.

Further, in exercise of the powers conferred by sub-section (12) of Section 36 of the said Act, the Central Government hereby declares that this certificate of approval of the said model shall also cover the weighing instruments of similar make, accuracy and performance of same series with maximum capacity up to 50 kg. with verification scale interval (n) in the range of 100 to 10,000 for 'e' value of 100mg. to 2g. or with verification scale interval (n) in the range of 500 to 10,000 for 'e' value of 5g. or more and with 'e' value of 1×10^k , 2×10^k or 5×10^k , where k is a positive or negative whole number or equal to zero manufactured by the same manufacturer in accordance with the same principle, design and with the same materials with which, the said approved model has been manufactured.

[F. No. WM-21 (47)/2008]

R. MATHURBOOTHAM, Director of Legal Metrology

भारतीय मानक ब्यूरो

नई दिल्ली, 23 सितम्बर, 2008

का.आ. 2775.—भारतीय मानक ब्यूरो नियम, 1987 के नियम 7 के उप-नियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि जिन भारतीय मानकों के विवरण नीचे अनुसूची में दिए गए हैं वे स्थापित हो गए हैं :—

अनुसूची

क्रम संख्या	स्थापित भारतीय मानक(कों) की संख्या, वर्ष और शीर्षक	नये भारतीय मानक द्वारा अतिक्रमित भारतीय मानक अथवा मानकों, यदि कोई हो, की संख्या और वर्ष	स्थापित तिथि
(1)	(2)	(3)	(4)
1.	आई एस 14700 (भाग 4/अनुभाग 9): 2008 आई ई सी 61000-4-9:2001 विद्युत चुम्बकीय संगतता (ई एम सी) भाग 4 परीक्षण और मापन तकनीकें अनुभाग 9 पल्स चुम्बकीय क्षेत्र प्रतिरक्षा परीक्षण (पहला पुनरीक्षण)	—	मई 2008
2.	आई एस 14700 (भाग 4/अनुभाग 1): 2008 आई ई सी 61000-4-1:2006 विद्युत चुम्बकीय संगतता (ई एम सी) भाग 4 परीक्षण और मापन तकनीकें अनुभाग 1 आई ई सी 61000-4 सीरीज का अतिक्रमण (पहला पुनरीक्षण)	—	मई 2008
3.	आई एस 14700 (भाग 6/अनुभाग 1): 2008 आई ई सी 61000-6-1:2005 विद्युत चुम्बकीय संगतता (ई एम सी) भाग 6 सामान्य मानक अनुभाग 1 आवासीय, व्यापारिक और सरल औद्योगिक वातावरण के लिए प्रतिरक्षा	—	मई 2008
4.	आई एस 14700 (भाग 4/अनुभाग 15): 2008 आई ई सी 61000-4-15:2003 विद्युत चुम्बकीय संगतता (ई एम सी) भाग 4 परीक्षण और मापन तकनीकें अनुभाग 15 फ्लिकरमीटर-कार्यात्मक एवं डिजाइन विशिष्टियाँ (पहला पुनरीक्षण)	—	मई 2008
5.	आई एस 14700 (भाग 4/अनुभाग 2): 2008 आई ई सी 61000-4-2:2001 विद्युत चुम्बकीय संगतता (ई एम सी) भाग 4 परीक्षण और मापन तकनीकें अनुभाग 2 वैद्युत-स्थैतिक उत्सर्जन प्रतिरक्षा परीक्षण (पहला पुनरीक्षण)	—	मई 2008
6.	आई एस 14700 (भाग 3/अनुभाग 2): 2008 आई ई सी 61000-3-2:2005 विद्युत चुम्बकीय संगतता (ई एम सी) भाग 3 सीमाएँ, अनुभाग 2 संसगत धारा उत्सर्जन की सीमा (उपस्कर निवेश धारा ≤ 16 ए प्रति फेज) (पहला पुनरीक्षण)	—	मई 2008
7.	आई एस 4545:(भाग 1): 2008 टेलिविजन प्रसारण ट्रांसमिशन के लिये रिसीवर मापन की पद्धतियाँ भाग 1 सामान्य प्रयोजन (दूसरा पुनरीक्षण)	—	जुलाई 2008

(1)	(2)	(3)	(4)
8.	आई एस 4545:(भाग 2):2008 टेलिविजन प्रसारण ट्रांसमिशन के लिये रिसीवर मापन की पद्धतियां भाग 2 दृष्टान्त के गुणधर्म और सामान्य अपेक्षाएं (दूसरा पुनरीक्षण)	—	जुलाई 2008
9.	आई एस 14700 (भाग 3/अनुभाग 3): 2008 आई ई सी 61000-3-3:2005 विद्युत चुम्बकीय संगतता (ई एम सी) - भाग 3 सीमाएँ अनुभाग 3 प्रति फेज 16 ए या उससे कम रेटित धारा के उपस्कर के लिए तथा सशर्त कनेक्शन पर लागू नहीं होने वाले उपस्कर के लिए निम्न वोल्टता आपूर्ति तंत्र में कॉलटेज में बदलाव, वॉलटेज में उतार चढ़ाव और सार्वजनिक निम्न वोल्टता प्रणाली में फिल्टर की सीमा (प्रथम पुनरीक्षण)	—	जुलाई 2008

इस भारतीय मानक की प्रतियाँ भारतीय मानक ब्यूरो, मानक भवन, 9, बहादुरशाह जफर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों : नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों : अहमदाबाद, बंगलूर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पुणे तथा तिरुवनन्तापुरम में बिक्री हेतु उपलब्ध हैं।

[संदर्भ : एल टी डी/जी-75]

लक्ष्मण स्वर्ण, कृत प्रमुख (एन आई टी डी)

BUREAU OF INDIAN STANDARDS

New Delhi, the 23rd September, 2008

S.O. 2775.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the Indian Standards, particulars of which are given in the Schedule hereto annexed have been established on the date indicated against each :

SCHEDULE

Sl. No.	No. and Year of the Indian Standards Established	No. and year of Indian Standards, if any, Superseded by the New Indian Standard	Date of Established
(1)	(2)	(3)	(4)
1.	IS 14700 (Part 4 Sec 9):2008 IEC 61000-4-9:2001 Electromagnetic Compatibility (EMC) — Part 4 : Testing and Measurement Techniques Section 9 : Pulse Magnetic Field Immunity Test (First Revision)	—	May, 2008
2.	IS 14700 (Part 4 Sec 1):2008 IEC 61000-4-1:2006 Electromagnetic Compatibility (EMC) — Part 4 : Testing and Measurement Techniques Section 1 Overview of IEC 6100-4 Series (First Revision)	—	May, 2008
3.	IS 14700 (Part 6 Sec 1):2008 IEC 61000-6-1:2005 Electromagnetic Compatibility (EMC) —Part 6 : Generic Standards Section 1 Immunity for Residential, Commercial and Light-Industrial Environments	—	May, 2008

(1)	(2)	(3)	(4)
4.	IS 14700 (Part 4/Sec 15):2008 IEC 61000-4-15:2003 Electromagnetic Compatibility (EMC)—Part 4 : Testing and Measurement Techniques Section 15 : Flickermeter—Functional and Design Specifications (First Revision)	—	May, 2008
5.	IS 14700 (Part 4/Sec 2):2008 IEC 61000-4-2:2001 Electromagnetic Compatibility (EMC)—Part 4 : Testing and Measurement Techniques Section 2 : Electrostatic Discharge Immunity Test (First Revision)	—	May, 2008
6.	IS 14700 (Part 3/Sec 2):2008 IEC 61000-3-2:2005 Electromagnetic Compatibility (EMC)—Part 3 : Limits Section 2: Limits for Harmonic Current Emissions (Equipment Input Current ≤ 16 A per Phase) (First Revision)	—	May, 2008
7.	IS 4545 (Part 1):2008 Methods of Measurement on Receivers for Television Broadcast Transmissions Part 1 General considerations (Second Revision)	—	July, 2008
8.	IS 4545 (Part 2):2008 Methods of Measurement on Receivers for Television Broadcast Transmissions Part 2 Tuning Properties and General Measurements (Second Revision)	—	July, 2008
9.	IS 14700 (Part 3/Sec 3):2008 IEC 61000-3-3:2005 Electromagnetic Compatibility (EMC)—Part 3 : Limits Section 3 Limitation of Voltage Changes, Voltage Fluctuations and Flicker in Public Low-Voltage Supply Systems for Equipment with Rated current ≤ 16 A per Phase and not subject to Conditional Connection (First Revision)	—	July, 2008

Copy of this Standard is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9 Bahadur Shah Zafar marg, New Delhi-110 002 and Regional Offices: New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices: Ahmedabad, Bangalore, Bhopal, Bhubaneswar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram.

[Ref:LTD/G-75]

LAXMAN SWAROOP, Head (LTD)

नई दिल्ली, 24 सितम्बर, 2008

क्र.आ. 2776.—भारतीय मानक ब्यूरो प्रमाणन विनियम 1988 के नियम 5 के उपनियम 6 के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि निम्न विवरण वाले लाइसेंसों को उनके आगे दर्शायी गई तारीख से रद्द कर दिया गया है :- 26-6-2008 से 25-7-2008

अनुसूची

क्रम संख्या	लाइसेंस संख्या	लाइसेंसधारी का नाम व पता	लाइसेंस के अंतर्गत वस्तु/प्रक्रम सम्बद्ध भारतीय मानक का शीर्षक	रद्द करने की तिथि
1.	7264473	एक्सेक्स फायर प्रोटेक्शन इंडस्ट्रियल यूनिट नं 18, शारद इंडस्ट्रियल इस्टेट, लोक गोआ, भांडुप पश्चिम मुंबई-400078	भा. मा. 2878:2004	2-7-2008

New Delhi, the 24th September, 2008

S.O. 2776. In pursuance of sub-regulation (6) of regulation 5 of the Bureau of Indian Standards (Certification) Regulations, 1988, the Bureau of Indian Standards hereby notifies that the licences particulars of which are given in the following schedule have been cancelled with effect from the date indicated against each : (26-6-2008 to 25-07-2008)

SCHEDULE

Sl. No.	Licence No.	Name and Address of the licensee	Article/Process with relevant Indian Standard covered by the licence cancelled	Date of Cancellation
1.	7264473	Everex (Fire Protection) Industries Unit No. 18, Sharad Industrial Estate, Lake Road, Greater Bombay, Bhandup (W) Maharashtra 400078	IS 2878:2004	2-7-2008

[No. CMD/13.13]

P. K. GAMBHIR, Dy. Director General (Marks)

नई दिल्ली, 24 सितम्बर, 2008

का.आ. 2777.—भारतीय मानक ब्यूरो (प्रमाणन) विनियम, 1988 के विनियम 4 के उपविनियम 5 के अनुसूचना में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि जिन लाइसेंसों के विवरण नीचे अनुसूची में दिए गए हैं, वे स्वीकृत कर दिए गए हैं :

अनुसूची

क्रम सं.	लाइसेंस सं.	वैधता दिनांक	लाइसेंस धारकों का नाम और पता	उत्पादन	भा. मा./भाग/विभाग/वर्ष
1	2	3	4	5	6
1	7853997	26-06-2009	परफेक्ट ड्रिंकिंग वाटर हाऊस संख्या-38, मौला-बाटम, गोवा-वेलहा, गोवा-403108	पैकेजबंद पेयजल	14543:2004
2	7844693	10-6-2009	पाटिल एन्टरप्राइजेस एस आर संख्या-3-91/1 और 92/2, कोलके गाँव, रायगढ़, पनवेल, महाराष्ट्र राज्य ।	पैकेजबंद पेयजल	14543:2004

[सं. सीएमडी/13 : 11]

जी. के. गम्भीर, उप महानिदेशक

New Delhi, the 24th September, 2008

S.O. 2777. — In pursuance of sub-regulation (5) of Regulation 4 of the Bureau of Indian Standards (Certification) Regulations 1988, the Bureau of Indian Standards, hereby notifies the grant of licences particulars of which are given below in the following schedule :

SCHEDULE

Sl. No.	Licence No.	Validity Date	Name and Address (factory) of the Party	Product	IS No./Part/Sec./Year
1	2	3	4	5	6
1	7853997	26-06-2009	Perfect Drinking Water House No. 38, Moula-Batim, Goa-Velha Goa 403108	Packaged Drinking Water (other than Packaged Natural Mineral Water)	14543:2004

1	2	3	4	5	6
2	7844693	10-05-2009	Patil Enterprises Sr. No. 3-9/1 & 92/2, Village Kolke Panvel, Dist. Raigad	Packaged Drinking Water (other than Packaged Natural Mineral Water)	14543:2004

[No. CMD/13:11]

P. K. GAMBHIR, Dy. Director General

नई दिल्ली, 25 सितम्बर, 2008

का.आ. 2778.—भारतीय मानक ब्यूरो नियम, 1987 के नियम 7 के उपनियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि जिन्हें भारतीय मानकों के विवरण नीचे अनुसूची में दिए गए हैं वे स्थापित हो गए हैं :—

अनुसूची

क्रम संख्या	स्थापित भारतीय मानक(कों) की संख्या, वर्ष और शीर्षक	नये भारतीय मानक द्वारा अतिक्रमित भारतीय मानक अथवा मानकों, यदि कोई हो, की संख्या और वर्ष	स्थापित तिथि
(1)	(2)	(3)	(4)
1.	संशोधन संख्या 1—आई एस 7884:2008 शैम्पू पृष्ठ सक्रियक से बना—विशिष्ट (तीसरा पुनरीक्षण)	कुछ नहीं	सितम्बर 2008

इस भारतीय मानक की प्रतियाँ भारतीय मानक ब्यूरो, मानक भवन, 9, बहादुरशाह जफर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों : नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों : अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयंबटूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पुणे तथा तिरुवनन्तापुरम में बिक्री हेतु उपलब्ध हैं।

[संदर्भ : पीसीडी/जी-7 (गजट)]

डॉ. (श्रीमती) विजय मलिक, निदेशक एवं प्रमुख (पीसीडी)

New Delhi, the 25th September, 2008

S.O. 2778.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the Indian Standards, particulars of which are given in the Schedule hereto annexed have been established on the date indicated against each :

SCHEDULE

Sl. No.	No. & Year and title of the Indian Standards Established	No. & Year of Indian Standards, if any, superseded by the New Indian Standard	Date of Established
(1)	(2)	(3)	(4)
1.	Amendment No. 1 to IS 7884:2008 Shampoo, surfactant based—Specification (Third Revision)	None	September 2008

Copy of this Standard are available for sale with the Bureau of Indian Standards, Manak Bhavan, 9, Bahadur Shah Zafar Marg, New Delhi-110002 and Regional Offices: New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices : Ahmedabad, Bangalore, Bhopal, Bhubaneswar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram.

[Ref: PCD/G-7 (Gazette)]

Dr. (Mrs.) VIJAY MALIK, Director and Head (PCD)

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 8 सितम्बर, 2008

का. आ. 2779.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय खाद्य निगम के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायलय नं.-1, चण्डीगढ़ के पंचाट (संदर्भ सं. 7/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 8-9-2008 को प्राप्त हुआ था।

[सं. एल-22012/74/2003-आईआर(सीएम-II)]

अजय कुमार गौड़, डेस्क अधिकारी

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 8th September, 2008

S.O. 2779.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. 7/2004) of the Central Government Industrial Tribunal-cum-Labour Court No.1, Chandigarh as shown in the Annexure, in the industrial dispute between the management of Food Corporation of India, and their workmen which was received by the Central Government on 8-9-2008.

[No. L-22012/74/2003-IR(CM-II)]

AJAY KUMAR GAUR, Desk Officer

ANNEXURE

**BEFORE SHRI GYANENDRA KUMAR SHARMA,
PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-1,
CHANDIGARH**

Case No L.D. 7/2004

Sh. Raj Kumar S/o Sh. Hakimmat Rai R/o Janta Preet Nagar,
Near New Grain Market, Ferozepur City, Ferozepur.

.... Applicant

Versus

The Distt. Manager, Food Corporation of India, Bus Stand
Road, Ferozepur Cantt., Ferozepur.

The Senior Regional Manager, Food Corporation of India,
SCO 356-59, Sector 34-A, Chandigarh

.... Respondent

APPEARANCES

For the workman : Shri B.N. Selgal Advocate.

For the management: Shri N.K. Zakhmi Advocate.

AWARD

Passed on 25-8-2008

Central Govt vide notification No. L-22012/74/2003 IR (CM-II) dated 30-1-2004, has referred the following dispute to this Tribunal for adjudication:

"Whether the action of the management of Food Corporation of India, Ferozepur Cantt., in terminating the services of Sh. Raj Kumar, ancillary labour w.e.f. 30-6-1999 is legal and justified? If not, to what relief the workman is entitled to and from which date?"

2. The present reference was made by the Central Govt. on the failure of conciliation proceedings for adjudication of the matter referred in the schedule referred above and the workman prayed for declaring the action of the management as illegal and invalid and for reinstatement in service with full back wages and all consequential benefits in the interest of justice, equity and fair play.

The management turned up and opposes this application.

As per office memorandum dated 30-4-2008 this case was fixed in pre lok adalat meeting on 25-8-2008 for its disposal by adopting the mediation and conciliation mechanism. The representative of the workman Shri B. N. Sehgal made a statement that the workman does not want to pursue with the present reference and the same may be dismissed as withdrawn. It is propose to dispose off this reference in Lok Adalat. Accordingly the reference is returned to the Central Govt. as withdrawn in Lok Adalat. Central Govt. be informed. File be consigned to record.

Chandigarh

G. K. SHARMA, Presiding Officer

25-8-08

नई दिल्ली, 8 सितम्बर, 2008

का. आ. 2780.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इलेक्ट्रॉनिक्स टेस्ट एण्ड डेवलपमेंट सेंटर के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायलय नं.-1, चण्डीगढ़ के पंचाट (संदर्भ सं. 217/2K2) को प्रकाशित करती है, जो केन्द्रीय सरकार को 8-9-2008 को प्राप्त हुआ था।

[सं. एल-42012/123/2002-आई आर(सीएम-II)]

अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 8th September, 2008

S.O. 2780.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 217/2K2) of the Central Government Industrial Tribunal-cum-Labour Court No.1, Chandigarh as shown in the Annexure, in the Industrial dispute between the management of Electronics Test and Development Centre and their workmen, which was received by the Central Government on 8-9-2008.

[No. L-42012/123/2002-IR(CM-II)]

AJAY KUMAR GAUR, Desk Officer

ANNEXURE

**BEFORE SHRI GYANENDRA KUMAR SHARMA,
PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-1,
CHANDIGARH**

Case No L.D. 217/2K2

Sh. Kishori Lal Bhatt S/o Sh. Jagdish Parsad Bhatt, Village
Kajheri, UT, Sector 52, Chandigarh

.... Applicant

Versus

The Sr. Director, Electronics Test & Development Centre,
B-108, Industrial Area, Phase VIII Mohali, Chandigarh.

...Respondent

APPEARANCES

For the workman : None

For the management : Shri R.P. Rana Advocate

AWARD

passed on 26-8-2008

Central Government vide notification No. L-42012/123/2002-IR(CM-II) dated 30-10-2002, has referred the following dispute to this Tribunal for adjudication:

"Whether the action of the management of Electronics Test & Development Centre, Mohali in terminating the services of Sh. Kishori Lal Bhatt S/o Sh. Jagdish Prasad Bhatt, Canteen Boy Helper w.e.f. 10-2-2001 is legal and justified? If not, to what relief the workman is entitled to and from what date?"

2. No one is present, on behalf of workman. Learned representative of the management is also present. Since morning this reference has been called number of times. At 10.45 am, it was ordered to be placed before this Tribunal once again at 2 pm. It is 2.30 now and on repeated calls no one is present, inspite of having of full knowledge of the proceedings of this reference. The reference is as old as referred to this Tribunal in the year 2002. On repeated calls since morning no one is present. Accordingly, the reference is dismissed in default for non-prosecution. Central Government, be informed accordingly. File to be consigned.

Chandigarh G.K. SHARMA, Presiding Officer
26-8-08

नई दिल्ली, 8 सितम्बर, 2008

क्र. आ. 2781.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय खाद्य निगम के प्रबंधन के संबंध निर्योक्तों और उनके कर्मचारों के बीच अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं.-1, खण्डीगढ़ के पंचाट (संदर्भ सं. 85/1989) को प्रकाशित करती है, जो केन्द्रीय सरकार को 8-9-2008 को प्राप्त हुआ था।

[सं. एल-42011/18/1988-आईआर(सी-II)]

अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 8th September, 2008

S.O. 2781.—In pursuance of Section 17 of the Industrial Disputes Act, 1947(14 of 1947), the Central Government hereby publishes the award (Ref. No. 85/1989) of the Central Government Industrial Tribunal-cum-Labour Court, No.1 Chandigarh as shown in the Annexure, in the

Industrial dispute between the employers in relation to the management of Food Corporation of India, and their workman, which was received by the Central Government on 8-9-2008.

[No. L-42011/18/1988-IR(C-II)]

AJAY KUMAR GAUR, Desk Officer

ANNEXURE

BEFORE SHRI GYANENDRA KUMAR SHARMA,
PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I,
CHANDIGARH

Case No I.D 85/89

Sh. Hari Krishan C/o Amritsar General Labour Union, Ekta Bhavan, Putlighar, Amritsar (Punjab)

....Applicant

Versus

District Manager, Food Corporation of India, Rani ka Bagh, Amritsar (Punjab)

.....Respondent

APPEARANCES

For the workman: Sh. H.K. Gandotra.

For the management: Sh. N.K. Zakhmi

AWARD

Passed on 26-8-2008

Central Government vide notification No. L-42011/18/1988-IR(C-II) dated 28-4-87, has referred the following industrial dispute regarding the workmen for Judicial adjudication:

"Whether the action of the management of Food Corporation of India in terminating the services of the following Watchmen from 1-9-86 is legal and justified? If not, to what relief the workmen concerned are entitled?"

The list of the workmen is as follows:-

1. Sh. Sakattar Singh.
2. Sh. Dilbagh Singh.
3. Sh. Rashpal Singh.
4. Sh. Gurmukh Singh S/o Sh. Mohan Singh.
5. Sh. Gurmukh Singh S/o Sh. Gyan Singh.
6. Sh. Ajit Singh.
7. Sh. Dalip Singh.

The six workmen from Serial No.1 to 6 filed the joint statement of claim, whereas, 7th one Sh. Dalip Singh filed the separate statement of claim with similar facts. It is the claim of the workman that they were appointed and working

as Watchmen as permanent and regular employees against permanent post with the respondent Food Corporation of India. Their services were terminated by the management of respondent on 1-9-86 without prior notice or retrenchment compensation, except Sh. Ajit Singh whose services were terminated on 17-9-86. All the workmen had completed 240 days in the service with the management of respondent and as their termination from the services were illegal and against the provisions of Industrial Disputes Act, they are entitled for reappointment on their reinstatement with the management of respondent with full back wages and consequential reliefs along with 18% interest with cost expenses incurred in perusing the case. Sh. Dalip Singh filed separate statement of claim on the similar facts that he worked with the management of respondent from 1-8-84 to 1-9-86 and without notice or retrenchment compensation, his services were terminated on 1-9-86, and he is also entitled for reinstatement in the service as has completed 240 days of work with the management.

The main objection of the management of FCI, as is evident from their written statement is that there is no master-servant relationship in between the workmen & management of FCI. Barring the workmen Dilbagh Singh, Ajit Singh and Sakattar Singh, all the rest 4 employees were engaged through the outsourcing agencies i.e. Security and Development Services Jalandhar and Bright Security Services, Amritsar. Both of these agencies, as contractor, provided the services of these workmen to the FCI and there was no master-servant relationship between the workmen and the FCI. FCI used to pay the dues of the workmen to the contractor agencies and, thereafter, the agencies used to pay the same to the workmen. The work which was carried on by the workmen was seasonal and not of permanent nature. Regarding workman Dilbagh Singh, it has been stated that prior to his engagement through the above mentioned 2 outsourcing agencies, he was appointed on D.C. approved rates from 1/82 to 3/85 and was paid accordingly. Regarding Ajit Singh, it has been stated that prior to his engagement through the outsourcing agencies (contractors), he worked for 15 days directly with the management and he was paid accordingly. Regarding workman Sakattar Singh, it has been stated that he worked directly with the management for 30 days in the month of January, 1985 to February, 1985 for which he was paid on the basis of D.C. rates and thereafter, he was re-engaged through the outsourcing agencies (contractors).

I have heard learned counsels and perused the entire materials on record. All the workmen filed their affidavits and were cross-examined in detail. On behalf of the management of FCI, Ex-Subedar Sarup Singh, Deputy Director, Bright Security Services, Amritsar filed his affidavit and he was cross-examined in detail. Sh. N.P.S Kohli, Regional Manager, FCI was also cross-examined as MW2 on his affidavit.

Heard learned counsels for the parties. Learned counsel for the workmen argued that there existed a direct relationship between the FCI and the workmen. They were directly under the control of the FCI, they were working under FCI under the instructions of the officers of FCI and they were paid, accordingly, directly by the FCI and not through any contractor. Learned counsel for the workmen relied upon certain case laws of Hon'ble Supreme Court, which I will discuss slightly later. Through all these case laws, the learned counsel has argued that the direct relationship is established and all the workmen should be reinstated into the service with full back wages.

On the other hand, learned counsel for the management of FCI contended that barring 3 workmen who have worked for a very short time with the management directly, all the workmen had worked through outsourcing agencies (contractors) and their existed no relationship of master and servant and no question of termination arise. For rest three workmen it has been contended that they have not completed 240 days in the preceding year from the date of their re-engagement through contractors.

The main question for determination before this Tribunal in this reference is whether the workmen were working directly with the management or through the outsourcing security agencies (contractors)?

It is well settled law that the workmen have to prove that they have worked 240 days in the preceding year from the date of their termination and were paid accordingly by the management. Hon'ble Apex Court in Range Forest Officer vs. S.T. Hadinani AIR 2002, Supreme Court 1147 held that onus lies upon claimant to show that he had in fact worked for 240 days in a year. In absence of proof of receipt salary or wages or report of appointment, filing of affidavit by the workmen is not sufficient evidence to prove that he had worked for 240 days in a year preceding to his termination. Accordingly, the onus lies on the workmen, to prove that they have worked with FCI for more than 240 days proceeding to the date of their termination and were paid by FCI accordingly. Mere filing of affidavits will not be sufficient. They have to prove this fact by some cogent evidence. They filed certain documents which are their attendance sheets and duty chart.

It is also important to mention that on behalf of the workmen, several applications were filed for summoning of certain records. Previously, the application which was filed in the year 1993, was dismissed by this Tribunal. Subsequently, few more applications were filed. During meantime, workmen preferred a writ petition before Hon'ble the Punjab and Haryana High Court seeking the direction for this Tribunal for summoning the records. Hon'ble the High Court of Punjab and Haryana was kind enough to direct this Tribunal to summon all the records mentioned in the application which the workmen filed in the year 1993, subject to the payment of 5,000 Rs. as cost.

Accordingly, this Tribunal directed the management of FCI for filing of the documents. Management filed documents consisting of almost 900 pages. To my surprise, during the course of argument, not a single document was referred by learned counsel for the workmen. The proceedings for summoning of documents took 15 years' time but when the documents were available to the workmen, as stated earlier, not a single document was referred. When the Tribunal itself pointed out, learned counsel for the workmen only answered that all the documents are in favour of the workmen. But this Tribunal is bound to peruse all the documents whether referred by the parties or not.

On the other hand, management has filed certain documents to prove that these workmen were working through contractors. Paper No.173 Ex. M-I is the letter written by Security and Development Services to the Assistant Manager, Food Corporation of India, Taran Taran containing the names of the persons for whose services were to be provided to the FCI, Taran Taran. The Security and Development Services has also filed the photocopies of the contracts signed by the workmen as Annexure M-II, M-III, M-IV and M-V. There is another letter of Bright Security Services Amritsar regarding the termination of service of 7 workmen.

The management of FCI has also filed certain documents from Bright Security Services which are relating to the employment of casual Watchmen and addressed to Assistant Manager, FCI, Taran Taran. These letters are regarding all the workmen. Likewise the Bright Security Services, Amritsar has also written a letter to Assistant Labour Commissioner (Central), Chandigarh informing him that services of all the workmen were terminated by the Bright Security Services and requested that the matter may please be closed. These two letters regarding the termination of the services namely by Security and Development Agency and Bright Security Services were written to the Conciliation Officers (Assistant Labour Commissioner, Chandigarh) as a proof that the workmen were working in FCI through these agencies. Annexure 17 to 19 is the payment made to the service provider agencies. On the back of the letter total days of every workman is written by the FCI but the payment was made to the Security Agency through checks on recommendation of AGI/AM/DM, FCI as is clear from Annexure-35.

In their cross-examination, the workman Sakattar Singh had admitted that he has received the payment for 7 days in the month of January, 1985 and for 13 days for February, 1985 but he has denied his disengagement in the month of February, 1985, after taking wages for 13 days. In his evidence, he has denied any relationship with any of the security agencies and has stated that he has been directly engaged by FCI. The same evidence is given by rest of the workmen.

Both of the security agencies have filed their licenses as well. Sh. Sarup Singh Deputy Director of Security and

Development Services was examined in the Court as well. He has categorically stated that Bright Security Services provided the Watchman to the FCI at Taran Taran.

It is true that at Page No. 1 of his cross-examination, he has stated that attendance was reported in FCI and the payment was made by FCI to the worker but in the very next line he has stated that duty period of the worker was of 8 hours. The supervisory agency used to depute the workers to discharge their duties and the attendance register was maintained by the supervisor of the agency. Likewise, MW2, N.P.S. Kohli has also denied the fact that the workmen were directly engaged by the FCI. Learned counsel for the workmen has relied upon the following case laws:-

1. Bank of Baroda Vs. Ghemar Ahai, Harji Bhai, Rabri, 2005-11 LLJ Page No. 235. In this case, Hon'ble the Apex Court has held that decree of proof required to separate claim of person to be workmen varies from one case to another. The facts of this case are quite different from the present case. In the case before the Supreme Court, there was a dispute regarding the termination of a driver who has filed the evidence regarding his appointment and payment. The respondent fails to file any evidence. In that case, there was no question involved as well that the services of the Driver were taken through the out-sourcing agency (contractor). In spite of it, the law laid down by Hon'ble the Apex Court on the burden of proof shall be complied with by this Tribunal, wherever applicable.

2. Hindustan Tin Workers Private Ltd. Vs. Employees of Hindustan Tin Workers Private Ltd. FJR Volume 5 Page 14. In this case, law laid down by Hon'ble the Supreme Court is relating to the retrenchment and award of back wages in which it has been held by Hon'ble the Apex Court that ordinarily, a workman whose services have been illegally terminated would be entitled to full wages, except to the extent he was gainfully employed during the enforced idleness. The dispute before this Tribunal in the instant case is whether the management of FCI engaged the workmen directly or their services were provided to the management of FCI by out-sourcing agencies (contractors)? Thus, the question of back wages arises after the determination of above mentioned question regarding the relationship between the workmen and the management.

3. Rajendra Kumar Kindra Vs. Delhi Administration, AIR 1984 Supreme Court-1805. This case is regarding the dismissal of an employee on his misconduct and the Facts of the instant case are altogether different as not applicable in the instant case.

4. Kapurthala Central Co-operative Bank Ltd. Vs. Presiding Officer Labour Court, Jalandhar and Others, 1994 FJR Page 95. This case is also relating to the

back wages and reinstatement of the workmen who have been illegally retrenched from the service.

After few days of argument, through Speed Post, the workmen also provided a copy of Hon'ble Apex Court judgment in U.P. State Electricity Board vs. Pooran Chand Pandey and Others. I have gone through this case law and the principle laid down in this case will be applied in the instant case as well.

Recently, in *GMO and GC Shinchar Vs. ONGC Contractual Workers' Union 2008 LLR 801*, Hon'ble the Apex Court of India had discussed the matter of contractual workmen. In this very case, the principles laid down by Hon'ble the Apex Court in *R.K. Panda Vs. Steel Authority of India and Others (84) 5, SCC-304* were discussed. The Apex Court held as follows:-

(i) Where contract labour is engaged in or in connection with the work of an establishment and employment of contract labour is prohibited either because the Industrial adjudication/court ordered abolition of contract labour or because the appropriate Government issued notification under Section 10 (I) of the CLRA Act, no automatic absorption of the contract labour working in the establishment was ordered;

(ii) Where the contract was found to be a sham and nominal, rather a camouflage, in which case the contract labour working in the establishment of the principal employer were held, in fact and in reality, the employees of the principal employer, himself. Indeed, such cases do not relate to abolition of contract labour but present instances wherein the Court pierced the veil and declared the correct position as a fact at the stage after employment of contract labour stood prohibited;

(iii) Where in discharge of a statutory obligation of maintaining a canteen in an establishment the principal employer availed the services of a contractor the Courts have held that the contract labour would indeed be the employees of the principal employer.

In the light of above observation, the Tribunal has to see the following facts :-

1. Whether all these workmen were directly recruited by the management of FCI?
2. Whether they were under the administrative control of the management of FCI?
3. Whether they were under the disciplinary action of the management of FCI?
4. Whether they were paid by the management of FCI directly? And
5. Whether the management of FCI exercised the power of punishment, removal and termination to these workmen?

The workmen have provided few documents which are the photo copies of attendance register in which the

attendance of workmen was marked. It is signed by the Assistant Manager of FCI. Likewise, duty-chart is also signed by Assistant Manager of FCI. In his evidence MW2, the Regional Manager, FCI has stated that sometimes he regulated the working of the workmen provided by security agencies and it was not the regular feature. In the ordinary circumstances, it is probable for FCI to engage the security persons at their option for security reasons out of the workmen who were provided by the security agencies. On the other hand, both of the security agencies namely Security and Development Services Jalandhar and Bright Security Services, Amritsar have filed the copies of their licenses. They have filed certain documents which proved that these agencies provided the services of workmen to the management of FCI. As per the documents, as referred earlier, filed by the management, it is also established that the FCI paid the dues of the workmen to the security agencies through cheques and the security agencies paid the wages of the workmen accordingly. Three workmen who have directly been engaged for sometime with the management of FCI have not proved that they have completed 240 days before their re-engagement through the contractor with FCI and they were also paid for 240 days directly by FCI.

Learned counsel for the workmen has also stated that the alleged service provider is nothing but a face wash, the contract with them is sham and actually the workmen have worked under the direct control of FCI. It has also been contended by learned counsel for the workman that the FCI has failed to prove that it was authorized to engage the labour on contract through agencies which is violation of Section 10 (I) of the CLRA Act as is held by Hon'ble Supreme Court in *Steel Authority of India Ltd. and Others vs. National Union Water Fund Workers and Others 2001 (91) FLR 182, Supreme Court*. Para 6 of the above judgment reads as under:—

"If the contract is found to be genuine and prohibition notification under Section 10(I) of the CLRA Act in respect of the concerned establishment has been issued by the appropriate Government, prohibiting employment of contract labourer in any process, operation or other work of any establishment and where in such process, operation or other work of the establishment the principal employer intends to employ regular workmen he shall give preference to the erstwhile contract labourer, if otherwise found suitable and, if necessary, by relaxing the conditions as to maximum age appropriately taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications."

Likewise, Hon'ble the Punjab and Haryana High Court in a recent judgment titled as *Food Corporation of India and Others Vs. Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court-I, Chandigarh 2008, LLR-391* has held:

1. Even when the Management-Corporation did not speak registration under Section 7 of the Contract Labour (Regulation & Abolition) Act on the date when the workmen were engaged, workers of the contractor will not be deemed to be the direct employees of the Management-Corporation.

2. If an industrial establishment is permitted to employ contract labourer through a contractor, engaging of such contract labour must be bona fide.

3. When it is found that engaging of contract labour was not bona fide and it was a mere camouflage then in those cases, the contract labour by the principal employer is to be treated as employees of the principal employer, who can be directed to regularize services of the contract labour in the concerned establishment but the workmen did not so plead hence they will not be entitled to any relief.

4. If a principal employer does employ the persons through the contractor who is having no licence under Section 12 of the Contract Labour (Regulation and Abolition) Act, then only penal provisions of Sections 23 and 25 of the said Act are attracted, hence it is nowhere provided that such employees employed through the contractor would become employees of the principal employer.

5. The Scheme of the Contract Labour (Regulation and Abolition) Act reveals that it regulates the employment of contract labour in certain establishment and provides for its abolition in certain circumstances hence it does not provide for total abolition of contract labour.

6. Reinstatement of 6 workmen of the contractor, as awarded by the Labour Court being erroneous is liable to be set aside since there was no violation of Section 25F of the Industrial Disputes Act by the petitioner as principal employer.

On perusal all the materials on record in the present case, I am unable to find out a single piece evidence on behalf of the workmen regarding the claims of their appointment being through the contractor and regarding the contract between the contractor and the FCI being sham. This Tribunal is bound to confine itself within four corners of reference. The reference is regarding the termination of the services of the workmen by FCI. The workmen have claimed that they were directly recruited by the management of FCI and their termination is illegal because it was made without notice and retrenchment compensation. The workmen nowhere in their statement of claim or even in evidence have challenged the contract, if any, to be sham or illegal. Thus, in absence of the claim of the workmen, this Tribunal, in my opinion has no power to discuss the above mentioned issue because, if FCI is permitted to employ contract labourer through a contractor, the contract must be bona fide. In case, it is found that

engaging of contract labour was not bona fide and it was a mere camouflage then in those cases, the contract labour by the contractor is to be treated as the employee of the FCI. This is not the case of the workmen at all. In the pleading for evidence, it is not mentioned that their engagement through contractor was not bona fide and it was a mere camouflage. On the other hand, their case is that they were directly employed by the management corporation.

On the basis of the documents, filed by both of the parties and oral evidence adduced by them, I am of the view that all the workmen at the time of their disengagement from the services were not the employees of FCI. Their services were provided by the above mentioned 2 out-sourcing security agencies as contractor to the management of FCI. Management of FCI has no administrative control over workmen during their services provided through these out-sourcing agencies. The workmen were not paid directly by FCI. The entire payment of wages was made to these out-sourcing agencies through cheques. Accordingly, no relationship of master and servant is established between his workmen and the management of FCI. As there was no relationship of master and servant, there was no question for termination of the workmen by FCI. The services, as proved through the document, were terminated by the out sourcing agencies. The reference is accordingly, answered. Central Government be informed. File be consigned.

G.K. SHARMA, Presiding Officer
नई दिल्ली, 8 सितम्बर, 2008

का. आ. 2782.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसार में, केन्द्रीय सरकार भारतीय खाद्य निगम के प्रबंधन के संबद्ध नियोक्तों और उनके कर्मचारों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं.-1, चण्डीगढ़ के पंचाट (संदर्भ सं. 139/1992) को प्रकाशित करती है, जो केन्द्रीय सरकार को 8-9-2008 को प्राप्त हुआ था।

[सं. एल-22012/227/एफ/1992-आईआर(सी-1)]
अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 8th September, 2008

S.O. 2782.—In pursuance of Section 17 of the Industrial Disputes Act, 1947(14 of 1947), the Central Government hereby publishes the award (Ref. No.139/1992) of the Central Government Industrial Tribunal-cum-Labour Court No.1, Chandigarh as shown in the Annexure, in the Industrial dispute between the employers in relation to the management of Food Corporation of India and their workmen, which was received by the Central Government on 8-9-2008.

[No. L-22012/227/F/1992-IR(C-II)]
AJAY KUMAR GAUR, Desk Officer

ANNEXURE

**BEFORE SHRI GYANENDRA KUMAR SHARMA,
PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-1,
CHANDIGARH**

Case No I.D 139/92

The District Manager, Food Corporation of India,
Hoshiarpur (Pb.)

...Applicant

Versus

The State President, FCI, Class-IV, Employees Union B-III,
Nabha Gate, Sangrur

...Respondent

APPEARANCES

For the workman: Sh. Hardayal Singh

For the management: Sh. Ravi Kant Sharma

AWARD

Passed on 1-9-2008

Government of India vide notification No. L-22012/
227/F/92-IR(C-II) dated 10-12-92, has referred the following
industrial dispute for Judicial adjudication:

"Whether the action of the management of Food Corporation of India ordering compulsory retirement to Shri Balwant Singh, Head Watchmen and Shri Tarsem Lal, Watchmen is legal and justified? If not, to what relief the concerned workmen are entitled to?"

The dispute between the parties, as is clear from their pleadings, is that on 5-2-83 the squad of district office checked the stock of wheat in Mukerian, in which the shortage of 122 bags of wheat was detected in shed 'B'. Shri Balwant Singh and Shri Tarsem Lal, the workmen in this instant case, along with the other employees present on the spot admitted the shortage of 122 bags and the shed 'B' was sealed. As the shed 'A' was empty, it was not sealed and on 6-2-83 Assistant Manager (depot), one of the delinquent official sent a telegram to the District Manager, Hoshiarpur which was received in district office on 7-2-83 to the effect that 123 bags of wheat were lying in shed 'A'. The stocks were again checked on 9-2-83 and it was found that 123 bags of wheat were lying in shed 'A'. Apart from the shortage of 122 bags of wheat, while having the weight of 249 bags, a shortage of 61.80.200 quintals of wheat was also found.

There is a dispute between the parties that during the check of stocks on 5-9-83, shed 'A' was not checked by the squad party and the Shortage of 122 bags of wheat was in shed 'B'. On the other hand the management of the Food Corporation of India, had alleged that Shed 'A' was also checked and as it was found vacant, the same was not

sealed. According to the management, these 123 bags of wheat were clandestinely placed in shed 'A' on the night of 5/6-2-83. Both of these workmen were on duty at depot from 4 p.m.-12 p.m. (Mid night) on 5-2-83 and they were again put on duty on the very next shift from 12 mid night to 8 A.M. on 6-2-83. It is the contention of the management that during this period 123 bags of wheat were placed in shed 'A'.

A preliminary enquiry was conducted in which the name of Shri Balwant Singh and Shri Tarsem Lal have not find place. It was thereafter, that the involvement of the workmen was shown on the ground that in the night of 5-2-83 and 6-2-83, both workmen were present on the spot and during this period within their knowledge, 123 bags of wheat was placed in shed 'A' in order to make up the shortage and to prevent them from the consequences of shortage.

The enquiry of these two workmen Balwant Singh and Tarsem Lal was conducted separately. Both of the workmen were charge sheeted for shortage of 122 bags of wheat and for unauthorizedly brought 123 bags of wheat in the night of 5/6-2-83 from outside and kept the same in shed no. A-1, to cover up the shortage. The charge sheet was regarding the misappropriation of 122 bags of wheat, shortage of 61-80-200 quintals of wheat and for keeping 123 bags of wheat inside the depot unauthorizedly. The enquiry officer conducted the enquiry against both of the workmen and after conducted the enquiry, he gave the report on 28-8-87 against the workmen to the effect that charges levelled against the workmen regarding misappropriation of 122 bags of wheat and bringing 123 bags of wheat unauthorizedly in depot to cover the shortage in connivance with co-workers are proved, whereas other charge regarding partial shortage of 61-80-200 quintals of wheat is not proved.

After receiving the enquiry the disciplinary authority without issuing any show cause notice to the workmen and without opportunity of being heard (personal hearing) on the proposed punishment, passed the punishment of compulsory retirement on 20-5-88. The workmen preferred an appeal against this compulsory retirement order which was dismissed by the appellat authority on 27-1-89. Thereafter, the workmen Balwant Singh and Tarsem Lal preferred an industrial dispute which was referred to this Tribunal on account of failure of conciliation proceedings in the office of Conciliation Officer.

I have heard learned counsel for the parties and pursued the materials on the record. Learned counsel for the workmen has stated that enquiry was conducted against the principal of natural justice, proper opportunity was not given to them. Enquiry officer was not properly appointed and the enquiry officer has not conducted the enquiry as per the procedure laid down in concerned rules.

The main contention which the learned counsel for the workmen stressed again and again is that the copy of enquiry report was not given to the workmen. They were summarily punished with the order of compulsory retirement in violation of the principle of natural justice as no show cause notice was issued to them and opportunity for personnel hearing on the proposed punishment was not afforded.

On the other hand learned counsel for the management of respondent has contended that the enquiry was conducted strictly as per the rules applicable to the parties. It was not obligatory on the part of the disciplinary authority to provide the copy of the enquiry report to the workmen under the rules. Accordingly, the disciplinary authority in compliance of the concerned rules without supply the copy of enquiry report and without issuing the show cause notice has passed the order of punishment for compulsory retirement of the workmen.

Learned counsel for the parties have relied on certain case laws. I will consider the case laws while discussing the relevant issues.

The main questions before this tribunal for adjudication are:-

(1) Whether the enquiry officer has conducted the enquiry in a fair, reasonable and proper manner and there has been no violation of any rules of principle of natural justice?

(2) Whether the enquiry officer has rightly held, on proper analysis of all the materials on record, as the charge proved against the workmen regarding the shortage of 122 bags of wheat on surprise check and unauthorizely placing 123 bags of wheat in shed no. A-1?

(3) Whether the non supply of copy of enquiry report will amount to the violation of principle of natural justice? and ?

(4) whether the disciplinary authority has committed a procedural error by not issuing any show cause notice and declining the opportunity or hearing on purposed punishment ?

I have gone through the entire file of enquiry proceedings regarding both of the workmen. The procedure for conducting the enquiry is mentioned in regulation 60 of the Discipline and Appeal Regulations of the Food Corporation of India (staff) Regulations, 1971. I have gone through the entire procedure to be adopted by the enquiry officer while conducting the enquiry. From the enquiry proceedings, it is clear that opportunity at every stage was given to the workmen by the enquiry officer. Two witnesses were examined by the enquiry officer and workmen accordingly, cross-examined them. An opportunity for adducing the defence witness was also given which was not availed by the workmen. It was duty of the enquiry

officer to afford the opportunity for defense witnesses, which was given, and on non-adducing any defense witness the enquiry officer proceeded further. Thus, concerning the procedure adopted by the enquiry officer, I am of the view that the enquiry was conducted in a very fair and reasonable manner and there seems to be no violation of any rules of Principle of Natural Justice.

Now, I have to discuss whether the enquiry officer has rightly concluded enquiry holding the charge against the workmen regarding the shortage of 122 bags and placing 123 bags unauthorizely in shed no. B-1 as proved. The three Judges Bench of Hon'ble Apex Court in State of Haryana and another Vs. Rattan Singh 1977, (11) LLN 51 held as follows:—

"In a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. Departmental authorities and Administrative Tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act. The essence of a judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice. Fairplay is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment vitiate the conclusions reached, such finding, even though of a domestic tribunal cannot be held good. The simple point is was there some evidence or was there no evidence not in the sense of the technical rules governing regular Court proceedings but in a fair commonsense way as men of understanding and worldly wisdom as men of understanding and worldly wisdom accept. Viewed in this way, sufficiency of evidence in proof or the finding by domestic tribunal is beyond scrutiny. Absence of any evidence in support of a finding is certainly available for the Court to look into because it amounts to an error of law apparent on the record".

In the said case law, Hon'ble the Apex Court has clearly established the law regarding the conducting enquiry and viewing the evidence by the Administrative Tribunals and in departmental enquiries. On perusal of the materials on record, it is evident that the surprise check was made on 5-2-83 and 122 bags of wheat was found short in shed 'B'. Regarding this incident of shortage of 122 bags of wheat, preliminary enquiry report was given on 6-2-83. A telegram was sent by Assistant Manager (depot) to the District Manager, Hoshiarpur with the facts that 123 bags of wheat are lying in shed 'A'. This telegram was received in the District Office on 7-2-83 and again there was a check whose report dated 17-2-83 is also on record. All the employees including the workmen who were present at the time of check on 5-2-83, admitted in writing

about the shortage of 122 bags in shed 'B' which was sealed. None of them informed the check squad that 123 bags of wheat are lying in shed 'A'. It is not the case of the workmen that at the time of checking by the squad, they forget by mistake to inform the checking squad that 123 bags of wheat are lying in depot in shed 'A'. After the spot checking dated 5-3-83 was over, it was a new fact which was brought to the notice of the District Authorities that 123 bags of wheat is lying in shed 'A'. Thus, this fact that suddenly the officials and the workmen present at the spot at the time of checking, informed the District Authorities about 123 bags of wheat in shed 'A' and their failure to disclose this fact at the time of check has a reasonable nexus with the fact as alleged by the management of respondent that these bags were brought and kept in shed 'A' in between the night of 5-3-83 and 6-3-83.

It is not mere conjecture and surmises of the enquiry officer but a fact proved by the two witnesses during the enquiry proceedings. Both of the witnesses who were present at the time of check as member of squad, and witnessed every proceedings, have adduced the evidence that during check, shed A-I was checked and it was not sealed because it was empty. Shed 'B' was only sealed because there was a shortage of 122 bags of wheat which was admitted by the officials present at the spot. As shed 'A' was not sealed, it gave an opportunity to keep 123 bags of wheat, to escape from the liability of shortage.

It is also admitted fact that both of these workmen were on duty in the night of 5-2-83 and 6-2-83. The telegram was sent to the District Authorities regarding the availability of 123 bags of wheat in shed 'A' on 6-2-83. Thus, there is also a nexus of the contention of the management of respondent that these 123 bags were kept in shed A-I during the night of 5-2-83 and 6-2-83 to meet out the shortage, and the fact that during this time admittedly both of these workmen were on duty as Security Guards who are responsible for carrying out and taken in of every lot of grains. Thus, the enquiry officer has rightly held that 123 bags of wheat were kept in shed A-I during the night of 5-2-83 and 6-2-83, while these workmen were on duty and it was done in connivance with the other employees responsible for shortage. Accordingly, I find no reason to interfere in the reasoning and findings of the enquiry officer. As there was no evidence regarding the shortage of lose wheat against any of the workmen, it was rightly held by the enquiry officer that another charge is not proved against them.

Another point for determination before this Tribunal is what will be the effect of non-supply of the enquiry report to both of the workmen? The number of case laws has been referred before me but I am quoting the relevant case laws only.

The three Judges Bench of Hon'ble Supreme Court, in *Union of India Vs. Mohd. Ramzan Khan* (AIR 1991 SC 471) laid down the law as follows:-

"Whenever the enquiry officer is other than the disciplinary authority and the report of the inquiry officer holds the employee guilty of all or any of the charges with proposal for any punishment or not, the delinquent employee is entitled to a copy of the report to enable him to make a representation to the disciplinary authority against it and the non-furnishing of the report amounts to a violation of the rules of natural justice"

The same issue was again discussed about the retrospective effect of the law laid down by the Hon'ble Apex Court in *Mohd. Ramzan Khan's case* (supra), by three Judges Bench of Hon'ble the Apex Court in *Managing Director ECIL Hyderabad Vs. B. Karunakar A.I.R. 1994, Supreme Court 1074*. Hon'ble The Apex Court in this case held that it was for the first time in *Mohd. Ramzan Khan's case* (supra) that the question squarely fell for decision before this Court. Hence till 20th November, 1990 i.e., the day on which *Mohd. Ramzan Khan's case* (supra) was decided, the position of law on the subject was not settled by this Court. It is for the first time in *Mohd. Ramzan Khan's case* (supra) that this Court laid down the law. That decision made the law laid down by Supreme Court prospective in operation, i.e., applicable to the orders of punishment passed after 20th November, 1990. The law laid down was not applicable to the orders of punishment passed before that date notwithstanding of the fact that the proceedings arising out of the same were pending in courts after that date. The said proceedings had to be decided according to the law, prevalent prior to the said date, which did not require the authority to supply a copy of the enquiry officer's report to the employee. The only exception to this was where the service rules with regard to the disciplinary proceedings themselves made it obligatory to supply a copy of the report to the employee.

This is the final law laid down by the Apex Court that if any punishment is given to the delinquent employee or workmen before 20-11-1990, i.e., the day on which *Mohd. Ramzan's case* (supra) was decided, the workmen or the delinquent employee have no right to claim that non-supply of the copies of enquiry report is in violation of principle of natural justice. In all the cases in which the punishment was given on, or after 20-11-1990, this plea was available to the workmen. Admittedly the punishment was given to the workmen on 20-5-88 and it was prior to the date of judgment in *Mohd. Ramzan Khan's case* (supra), and if the concerned rules permit the disciplinary authority to pass the order of punishment without supplying the copy of the report, it will be lawful and cannot be challenged. Accordingly, in this case there will be no effect of non-supply of the copy of the enquiry report to the workmen.

The next contention on behalf of the workmen is that no show cause notice was given to them and opportunity was not afforded for personnel hearing. The copy of discipline and appeal regulations of Food Corporation of India (Staff) Regulations 1997 is before me. Compulsory

retirement, the punishment which is awarded to both of the workmen, comes within the major penalty, as defined in regulation 54 of the Discipline and Appeal Regulations of the Food Corporation of India (Staff) Regulations, 1971. The procedure for imposing for major penalties is given in regulation 59. The workmen has no contention other than that no opportunity for personnel hearing was given to him and no show cause notice was serve upon him with proposed punishment. Regulation 59(3) of the said Regulations provides that if the disciplinary authority having regard to its finding on all or any of the reasons of charge and on the basis of evidence adduced during the enquiry, is of the opinion that any of the penalties specified in clause v to ix of regulation 54 should be imposed on the corporation employee, it shall make an order imposing such penalty and it shall not be necessary to give the corporation employee any opportunity of making representation on the penalty proposed to be imposed. Thus, the regulation permitted the disciplinary authority to impose the penalty without asking the explanation or issuing show cause notice. This Tribunal, while adjudicating the reference has its own limitations and has to implement the regulations as such. In my opinion, this Tribunal has no power to decide the virus or the constitutionality of any regulation to impose the penalty without hearing or want of calling explanation. So, there was no procedural error committed by the disciplinary authority while awarding the punishment of compulsory retirement.

The penalty for compulsory retirement from the service is in my opinion proportionate to the misconduct committed by the workmen. 142 bags of wheat were found short in a check by the special squad. The workmen in connivance with other employees try to make the short good by putting 143 bags in another shed. Thus, I have no occasion to interfere in the punishment given by the disciplinary authority.

One of the contention on behalf of the workmen is that one of the employee who was also punished by the Food Corporation of India went to the Civil Court. The workmen has filed the photocopy of the judgment passed by the Civil Judge Hoshiarpur, decreeing the suit of Shri Sagliram Assistant Grade (1) on the ground that non-supply of the copy of the enquiry report, violate the principle of natural justice. This decree was set aside by the District Judge, Hoshiarpur vide order dated 7-11-96, and the suit was accordingly, dismissed.

On the basis of the observations made above the reference is answered in positive that the action of the management of Food Corporation of India ordering compulsory retirement to Shri Balwant Singh Head Watchman and Shri Tarsem Lal Watchman is legal and justified and workman are not entitled to any relief. Let the Central Government be informed. File is consigned.

G.K. SHARMA, Presiding Officer

नई दिल्ली, 8 सितम्बर, 2008

का. आ. 2783.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय खाद्य निगम के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायलय नं. 1, चण्डीगढ़ के पंचाट (संदर्भ सं. 151/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 8-9-2008 को प्राप्त हुआ था।

[सं. एल-22012/429/1999-आईआर(सीएच-II)]

अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 8th September, 2008

S.O. 2783.—In pursuance of Section 17 of the Industrial Disputes Act, 1947(14 of 1947), the Central Government hereby publishes the award (Ref. No. 151/2000) of the Central Government Industrial Tribunal-cum-Labour Court No.1, Chandigarh as shown in the Annexure, in the Industrial dispute between the employers in relation to the management of Food Corporation of India and their workmen, which was received by the Central Government on 08-9-2008.

[No. L-22012/429/1999-IR(CM-II)]

AJAY KUMAR GAUR, Desk Officer

ANNEXURE

BEFORE SHRI GYANENDRA KUMAR SHARMA,
PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-1,
CHANDIGARH

Case No L.D 151/2000

The President, F.C.I. Ancillary Labour Union C/o Malkiat Singh, VPO Mohie, Distt. Ludhiana

... Applicant

Versus

The Distt. Manager, Food Corporation of India, 804, Gurdev Nagar, Ludhiana.

... Respondent

APPEARANCES

For the workman: Shri B.N. Sehgal Advocate.

For the management: Shri N.K. Zakhmi Advocate.

AWARD

Passed on 25-8-2008

Central Govt. vide notification L-22012/429/99-IR(CM-II) dated 29-2-2000, has referred the following dispute to this Tribunal for adjudication:

"Whether the action of the management of Food Corporation of India in not regularizing the services of the workmen as per list shown in annexure is just and legal? If not, to what relief the workers are entitled and from which date?"

2. The present reference was made by the Central Govt. on the failure of conciliation proceedings for

adjudication of the matter referred in the schedule referred above and the workman prayed for declaring the action of the management as illegal and invalid and for reinstatement in service with full backwages and all consequential benefits in the interest of justice, equity and fair play.

The management turned up and opposes this application.

As per office memorandum dated 30-4-08 this case was fixed in pre lok adalat meeting on 25-8-08 for its disposal by adopting the mediation and conciliation mechanism. The representative of the workman Shri B.N. Sehgal made a statement that the workman does not want to pursue with the present reference and the same may be dismissed as withdrawn. It is propose to dispose off this reference in Lok Adalat. Accordingly the reference is returned to the Central Government as withdrawn in Lok Adalat. Central Government be informed. File be consigned to record.

Chandigarh G.K. SHARMA, Presiding Officer
25-8-08

नई दिल्ली, 8 सितम्बर, 2008

का. आ. 2784.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय खाद्य निगम के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायलय नं.-1, चण्डीगढ़ के पंचाट (संदर्भ सं. 29/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 08-9-2008 प्राप्त हुआ था।

[सं. एल-22012/291/1999-आईआर(सीएम-11)]

अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 8th September, 2008

S.O. 2784.—In pursuance of Section 17 of the Industrial Disputes Act, 1947(14 of 1947), the Central Government hereby publishes the award (Ref. No. 29/2000) of the Central Government Industrial Tribunal-cum-Labour Court No.1, Chandigarh as shown in the Annexure, in the Industrial dispute between the employers in relation to the management of Food Corporation of India, and their workmen, which was received by the Central Government on 08-9-2008.

[No. L-22012/291/1999-IR(CM-II)]

AJAY KUMAR GAUR, Desk Officer

ANNEXURE

BEFORE SHRI GYANENDRAKUMAR SHARMA,
PRESIDING OFFICER, CENTRAL GOVT.
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-1,
CHANDIGARH

Case No I.D 29/2000

The President, Food Corporation of India, Ancillary Labour Workers Union, Mohalla Virk, VPO Sawaddi, Dist. Ludhiana.

...Applicant

Versus

The Senior Regional Manager, FCI, Punjab Region, Sector 34-A, Chandigarh.

...Respondent

APPEARANCES

For the Workman: Shri B.N. Sehgal Advocate.

For the Management: Shri N.K. Zakhmi Advocate.

AWARD

Passed on 25-8-2008

The Central Government vide Notification No. L-22012/291/99-IR(CM-II) dated 31-1-2000, has referred the following dispute to this Tribunal for adjudication :

"Whether the action of the management of Food Corporation of India in not regularizing the services of the workers shown in the annexure is just and legal? If not, to what relief the workers are entitled and from which date?"

2. The present reference was made by the Central Govt. on the failure of conciliation proceedings for adjudication of the matter referred in the schedule referred above and the workman prayed for declaring the action of the management as illegal and invalid and for regularizing the service with full backwages and all consequential benefits in the interest of justice, equity and fair play.

The management turned up and opposes this application.

As per office memorandum dated 30-4-08 this case was fixed in pre lok adalat meeting on 25-8-08 for its disposal by adopting the mediation and conciliation mechanism. The representative of the workman Shri B.N. Sehgal made a statement that the workman does not want to pursue with the present reference and the same may be dismissed as withdrawn. It is propose to dispose off this reference in Lok Adalat. Accordingly the reference is returned to the Central Govt. as withdrawn in Lok Adalat. Central Govt. be informed. File be consigned to record

Chandigarh G.K. SHARMA, Presiding Officer
25-8-08

नई दिल्ली, 8 सितम्बर, 2008

का. आ. 2785.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेट बैंक आफ पटियाला के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायलय नं.-1, चण्डीगढ़ के पंचाट (संदर्भ सं. 17/1990) को प्रकाशित करती है, जो केन्द्रीय सरकार को 8-9-2008 को प्राप्त हुआ था।

[सं. एल-12012/270/1989-आईआर(बी-3)]

वी.के. मनचन्दा, अनुभाग अधिकारी

New Delhi, the 8th September, 2008

S.O. 2785.—In pursuance of Section 17 of the Industrial Disputes Act, 1947(14 of 1947), the Central

Government hereby publishes the award (Ref. No. 17/1990) of Industrial Tribunal-cum-Labour Court, No.1 Chandigarh as shown in the Annexure, in the Industrial dispute between the management of State Bank of Patiala, and their workmen, received by the Central Government on 08-9-2008.

[No. L-12012/270/1989-IR(B-3)]

B. K. MANCHANDA, Section Officer

ANNEXURE

**BEFORE SHRI GYANENDRA KUMAR SHARMA,
PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-1,
CHANDIGARH**

Case No. LD 17/90

General Secretary, State Bank of Patiala Staff Union 719,
Sector-22A, Chandigarh

..... Applicant

Versus

The General Manager, (Operation), State Bank of Patiala
Mall Road Patiala.

..... Respondent

APPEARANCES:

For the workman: Shri Hardyal Singh Advocate.

For the management: Shri N.K. Zakhmi Advocate.

AWARD

Passed on 14-8-2008

The Central Government vide notification L-12012/270/89-IR (B-3) dated 11-1-1990, has referred the following dispute to this Tribunal for adjudication:

"Whether the action of the State Bank of Patiala in dismissing Shri Bhagwant Singh, Record Keeper/ Godwon Keeper at their Miller Ganj, Ludhiana branch w.e.f. 24-8-88 is legal and justified? If not, to what relief the concerned workman is entitled to and from what date?"

The workman Shri Bhagwant Singh was charged for unauthorized delivery of stocks to M/s. Mehra Sales Corporation Ludhiana, M/s. D.C. Mehra Company Ludhiana and M/s. Rajendra Trading Company, Ludhiana for value aggregating to Rs. 4,58,224.35- which were placed with the bank as security in the cash credit limit to Rs. 2 lakhs each availed of by the aforesaid firms from the Ludhiana Miller Ganj, branch and in order to conceive this delivery certain stocks of inferior quality with value aggregating to Rs. 1,33,004 approximately were kept in the bank's godown. The workman reply to the said charge showing his ignorance about the fraud played by one of the partner of the company Mr. Mehra. Dissatisfied with the explanation given by the workman the disciplinary authority Zonal Manager, Jalandhar appointed Shri D.N. Garg as the Enquiry Officer to enquire the charges levelled against the workman. The letter dated 1-1-1988 regarding the appointment of Shri Garg as an enquiry officer itself contains the procedure

to be adopted by the enquiry officer and a copy of the said letter along with copy of the charge sheet was given to the workman. Enquiry Officer while conducting an enquiry recorded the evidence and full opportunity was given to the workman. The workman at every stage of enquiry was afforded an opportunity. The Enquiry Officer before filing the report of the enquiry also gave an opportunity for written submissions which the workman availed. After concluding the Enquiry the Enquiry officer gave its report and the disciplinary authority after issuing show cause notice and personal hearing, dismissed the workman from service vide order dated 24-8-1988. The workman preferred an appeal but the same was dismissed vide order dated Jan. 13, 1989. I have heard learned counsels for the parties and perused the entire materials on record.

So far as the procedural genuineness of the enquiry is concerned, in my opinion the Enquiry Officer conducted the enquiry in a fair and reasonable manner after given full opportunity to the workman and there seems no violation of any rules of principle of natural justice. The further question before this tribunal is about the finding in the enquiry and reasoning thereof. The finding of the enquiry given by the Enquiry Officer is that workman without the permission of the manager concerned unauthorizedly removed the stocks against the norms of the bank. On this very charge the disciplinary authority punished the workman with the penalty of dismissal assuming that the misconduct of the workman is gross misconduct.

I have gone through the entire materials on record include the evidence adduced by the parties. There is a difference between the performing of duties negligently and misuse the position while discharging the duties by a Public officer/employee. Undoubtedly, as per the evidence and even the findings of the Enquiry Officer there is no iota of evidence to prove that the workman removed the stocks in collusion with the members of the firm or with intent to gain something in lieu of removing the stocks. Meaning thereby, the fraudulent act, any embezzlement, or any act of misrepresentation or intentionally causing the financial loss to the financial institution is not proved in the enquiry. All the witnesses of the bank may be Sh. Jagat Sharna P.W. 1, Shri. K.D. Vashist P.W.2, Shri A.L. Sharma D.W.1, the then Head Cashier of the bank and Shri Indra Singh D.W.2, the then Manager of the Bank (now retired) have shown, in their evidence, faith in the integrity, behavior, attitude and the sincerity in working of the workmen. P.W.1. and P.W.2 specifically stated that prior to the incident they have not heard about any act committed by the workman which would have been against the interest of the bank. Thus, the removing of the stocks is just a negligent act committed by the workman without any intent to commit fraud with the bank or any of its customers. The act of workman by removing the stocks cannot be said to be done in collusion and even there is no iota of evidence to prove that he has done it with intention of gaining something. Undoubtedly, it is a procedural mistake on account of the negligent act of the workman by which no

financial loss was suffered to the financial institution. It is true that in the case of the fraudulent act, embezzlement and tempering the documents of the bank; it cannot be a plea of the workman that there has been no financial loss to the financial institution (banking companies). But the instant case is of different nature and on different footing. There is no evidence for fraudulent act, embezzlement or tempering with the records of bank with intent to gain something for the wrongful transaction and in the cases of such circumstances, it is valid contention that financial institution has not suffered any financial loss. The evidence reveals that one of the partner Smt. Shakuntala took the guarantee for all outstanding loans on her property which was valued at about Rs. 15 lakhs whereas the loan liability was just 4 lakhs plus and the entire amount thereafter, was recovered from the partners.

Thus, without commenting on the procedure and the findings of the enquiry officer, I am of the view that the disciplinary authority while awarding the punishment to the workman has not applied the mind properly regarding the abovementioned facts. At the cost of repetition a distinction should have to be made by the disciplinary authority on fraud committed with the bank, embezzlement committed with the bank or tempering the records of the bank with the procedural mistake committed by the workman on account of negligent act. The disciplinary authority while passing the punishment and imposing the penalty of dismissal have casually taken the view that the charge has been proved against the workman and the bank has lost the confidence in the workman. It is true that the workman is working in a financial institution and if the financial institution lost the confidence in the workman, it will not be proper to continue the workman in the bank. But the terms 'losing the faith and confidence' in the workman are to be decided judiciously with open brain. Every act which is said to be misconduct in the financial institution cannot be said to be of such a nature that the institution has lost faith and confidence in the workman. If it would have been the intention of concerned regulations, there had been no requirement of mentioning several penalties, but one that is the dismissal of the workman from the bank. If the regulations contained the several penalties, it itself shows that the penalty has to be imposed in proportionate to the misconduct committed by the workman.

Learned counsel for the management has relied upon two case laws namely Shri L.K. Verna appellant Vs. H.M.F. Ltd. 2006 (1) SCT 601. Paras 10 & 20 of the judgment are relevant and the principle laid down by Hon'ble the Apex Court in the above case shall be applied as such, if found relevant. In the above case, para 10 is relating to the admission on the charges whereas para 20 is relating to the quantum of punishment. In the instant case the workman has not accepted the charges levelled against him and on punishment as mentioned in Para 20, the principle laid down by the Hon'ble Apex Court shall be applied with

Another case law cited by the management is Chairman-cum-M.D., T.M.C. S. Corporation Ltd. Vs. K. Mera Bai 2006 (1) SCT 460. This was the case as disclosed in para 19, 24, 27, 28 and 34 regarding the tempering in the records of the bank for issuing of a stock and for swindling the corporation in collusion with the other members of the staff through misappropriation of stocks and cash of the corporation causing huge loss to the corporation to the tune more than Rs.9 lakhs. The facts in the instant case are different as there is no loss to the financial institution and as stated earlier there has been no fraud, no misrepresentation and no embezzlement and no tempering the record of the bank proved against the workman. Thus, in my opinion the punishment given by the disciplinary authority is shockingly disproportionate to the committed misconduct. It is true that the degree of efficiency in the financial institution, like banks, is much higher than the other institutions. But it is also true that dismissal from the service is the financial death of a man and it should be on the ground alone where the misconduct is of such a nature that it will not be proper and safe for the management to continue the services with the bank. Nature and degree of misconduct has not been seen by the disciplinary authority while passing the punishment for dismissal.

The powers of the tribunal for interfering in the punishment given by the disciplinary authority are very limited. Section 11 A of the Industrial Disputes Act, empowers the Tribunal to interfere in the punishment of dismissal, removal etc. given by disciplinary authority. The Tribunal has to springly exercise these powers only in the cases where the punishment is shockingly disproportionate with the committed misconduct. It depends on facts and circumstances of the case. As stated earlier that the punishment given by the disciplinary authority is shockingly disproportionate to the committed misconduct which is merely a procedural mistake on account of negligent act committed by the workman. So, on the basis of the misconduct, it cannot be said that the bank has lost faith and confidence in the workman and in my opinion he should continue with the bank as has been certified by at least two managers and other employees of the bank while adducing evidence before the Enquiry Officer.

The misconduct for transferring the stocks unauthorizedly by acting negligently is proved against the workman. Thus, he should be punished for that misconduct only. As there has been no intention for transferring such stocks for wrongful gain and against the interest of the bank, in my opinion stoppage of five increments with cumulative effect will be the proportionate punishment to be awarded to the workman. Accordingly exercising the powers vested in this Tribunal under Section 11 A of the Industrial Disputes Act, the punishment of dismissal from the service is converted and changed into the stoppage of five increments with cumulative effect and the workman is liable to be reinstated in the service with full back wages.

This reference is answered accordingly. Let the Central Government be informed. File is consigned.

G. K. SHARMA, Presiding Officer

नई दिल्ली, 8 सितम्बर, 2008

का.आ. 2786.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार जम्मू एवं कश्मीर बैंक लि. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-1, चण्डीगढ़ के पंचाट (संदर्भ सं. 141/1992) को प्रकाशित करती है, जो केन्द्रीय सरकार को 8-9-2008 प्राप्त हुआ था।

[सं. एल-12012/237/1992-आईआर(डी-1)]

बी. के. मनचन्दा, अनुभाग अधिकारी

New Delhi, the 8th September, 2008

S.O. 2786.—In pursuance of Section 17 of the Industrial Disputes Act, 1947(14 of 1947), the Central Government hereby publishes the award (Ref. No. 141/1992) of Industrial Tribunal-cum-Labour Court-1, Chandigarh as shown in the Annexure, in the industrial dispute between the management of The Jammu and Kashmir Bank Ltd., and their workmen, received by the Central Government on 8-9-2008.

[No. L-12012/237/1992-IR(D-1)]

B.K. MANCHANDA, Section Officer

ANNEXURE

**BEFORE SHRI GYANENDRA KUMAR SHARMA,
PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-1,
CHANDIGARH**

Case No. LD 141/1992

Sh. Subash Chander S/o Shri Parmanand S/o Shri Jai Bhagwan Ajay Kumar, Gohana Road, Near Gaushala Mandi, Panipat.

..... Applicant

Versus

Deputy General Manager, The Jammu and Kashmir Bank Ltd., 6/91, Padam Singh Road, Karol Bagh, New Delhi.

.....Respondent

APPEARANCES:

For the workman: Shri R.P. Rana

For the management: None for the management

AWARD

Passed on 14-8-2008

The Central Government vide notification No. 12012/237/1992-IR(D-1), New Delhi, dated 18-12-92, referred the following industrial dispute for judicial adjudication:

“Whether the action of the management of Jammu & Kashmir Bank Ltd. in terminating the services of Shri Subhash Chander w.e.f. 25th of August, 1991 is legal and justified? If not, to what relief the workman is entitled and from what date?”

I have gone through the pleadings of parties. It is evident that the workman Subhash Chander was appointed and allowed to join the duties with the management of the Bank on 10-5-89 and he worked till 24-8-91. He was removed from the services on 24th of August, 1991 without notice or retrenchment compensation. The workman has prayed that he has completed 240 days of service in the preceding year from the date of his termination, he must be allowed to join the bank as he was illegally removed from the services in violation of the provisions of Industrial Disputes Act.

The management denies the appointment of the workman on permanent basis and alleged that he has not worked with the bank from 10-5-81 to 24-8-91 continuously. He was appointed on the temporary basis and the services rendered by him were of casual nature. He was appointed as a Waterman for the summer period and his functioning was seasonal.

Both of the parties adduced the evidence. Certain documents were filed by workman which are the letters said to be written by the Manager, Jammu & Kashmir Bank Ltd. to the Head Office regarding the workman, mentioning him as temporary Waterman. The management denies these documents and also failed to file the original documents with contention that the matter is very old and the bank is not having the originals of the documents whose photo-copies have been filed by the workman. The management has disputed these documents only on the ground that these are photo-copies of the documents which are not admissible in evidence. The management has not disputed the genuineness of these documents on some other grounds. Considering the nature of the proceedings before this Tribunal, I am of the view that on account of the failure of the management of the bank, in filing the original documents, the photo-copies of these documents shall be read over in evidence.

If a workman alleged that he has worked for 240 days and was paid the wages for 240 days, he has to prove the contention. As per the law of the land, mere filing of statement of claim and affidavits in support of this contention will not be sufficient but some cogent evidence has to be filed. The cogent evidence may be a copy of salary certificate, copy of leave orders, copies of correspondence made between the workman and the bank and copies of vouchers. List is not exhaustive but depends on the facts and circumstances of the case as to what should constitute the cogent evidence?

Naturally original documents are always with the bank. The workman can only manage some photo-copies of these documents and if the management is unable to file the original documents, the photo-copies filed by the workman should be considered and read over in evidence because the proceedings before the Tribunal are altogether different in nature than that of the proceedings before the Civil Court. Accordingly, these letters will be considered while answering this reference.

In a recent judgment, Hon'ble the Apex Court in *Sita Ram and Others Vs. Moti Lal Nehru Farmers' Training Institute 2008 (117) FLR-1191* Hon'ble the Apex Court has held that adverse inference can be drawn when employer withholds records under his exclusive custody. Para 15 of this judgment reads as under :

"It is evident that the respondents have withheld the best evidence. The wage-sheet, the provident fund records and other documents were in their possession. They were statutorily required to maintain some documents. It may be true that the learned Labour Court did not draw any adverse inference expressly, but whether such an adverse inference has been drawn or not must be considered upon reading the entire Award. The High Court, in our opinion, has wrongly opined that the award suffers from an error of law and was otherwise based on surmises and conjectures."

Paper No. 23 is a letter dated 10-1-91 written by Manager, Jammu & Kashmir Bank Ltd. to Deputy-General Manager regarding the regularization of the service of workman as he is working up to the entire satisfaction of the staff members. It is also mentioned in the letter that he has put in all the efforts to increase the business of the bank. The Letter Paper No. 24 is the letter written by Subhash Chander, General Manager, Jammu & Kashmir Bank, dated 10.1.91, regarding the regularization of his service. In this letter, it has been mentioned that 300 rupees per month is a very meagre amount which is not sufficient to run his family consisting of 4 persons. This letter was forwarded vide aforesaid letter of Manager, Jammu & Kashmir Bank to the General Manager on 10-1-91.

Paper No. 26 is the letter written by workman Subhash Chander on 19-4-91 to the Deputy General Manager, J & K Bank for regularization of his service. This letter was forwarded by the Manager, Jammu and Kashmir Bank to the Deputy General Manager on 19-4-91. In this forwarding letter the Manager, Jammu & Kashmir Bank Ltd. has recommended that the case of the workman may be considered sympathetically and he may be put in the regular cadre of Peons as his work and conduct is up to the entire satisfaction of his superiors.

Paper No. 27 is another letter dated 27-7-91 regarding workman (Temporary Waterman) written by Manager, Jammu & Kashmir Bank Ltd. to the Deputy General Manager, Divisional Office, New Delhi. In this letter, it is mentioned that on 9-4-91 the application of Shri Subhash Chander (Temporary Waterman) for regularization of his services in the bank was forwarded duly recommended, to which nothing has been heard from Head Office. Manager who wrote this letter, once again requested the Deputy General Manager to consider the regularization of the service of the workman sympathetically and also certified that the behaviour and the conduct of the workman is to the satisfaction of the branch. Rest two documents Paper Nos. 28 and 29 are the certificates given by two firms namely:

M/s. Munna Lal, Tara Chand and M/s. Bhagwati Trading Company having the accounts in and running business with the J & K Bank.

The contention of the bank is that the workman was temporarily appointed for summer season as Waterman but this contention is falsified by the letter of the Manager of Jammu and Kashmir Bank written to the Deputy General Manager on 10-1-91. This letter shows that the workman had worked even in winters in the month of January. The letters containing the facts that he was paid monthly was forwarded by the Manager to the Zonal Manager with the recommendation that his services be regularized as his work and conduct to the management of the bank is satisfactory. From the perusal of all the letters filed by the workman, it is evident that the workman was appointed on daily wages, payment was made on monthly basis and he continuously worked from 10-5-89 to 24-5-91 which is more than 240 days. Accordingly, the workman has not only with the affidavit but by other cogent evidence (the documents) proved that he has worked 240 days regularly with the bank preceding the date of his termination. The two letters forwarded by the Manager of J&K Bank to the Head Office also shows that he was paid Rs. 300/- per month and thereafter, Rs.400/- per month. Accordingly, the workman has also proved that he was also paid for 240 days for the preceding year from the date of his termination. Adverse inference is also drawn by this Tribunal in compliance of the law laid down by Hon'ble Apex Court in *Sita Ram's case (supra)*.

He was removed from the services, admittedly, without notice or retrenchment compensation. It is also not disputed that the workman was not properly appointed and it was a back door entry. If the case would have been like this, there was no occasion to the Manager of J & K Bank for recommending the request of the workman for his regularization of his services. The Manager concerned not only forwarded the application of the workman but also recommended for the regularization of his services. On the basis of above observations, I am of the view that the removal of the workman from the services as daily wage is illegal and against the principles of natural justice.

Accordingly, the first part of the reference is answered in negative that the action of the management of the Jammu & Kashmir Bank Ltd. in terminating the services of Shri Subhash Chandra w.e.f. 25-8-91 is not legal and justified.

Now I have to discuss the second part of the reference that is to what relief the workman is entitled and from what date? As the termination of the workman was illegal and unjustified, he deserves to be in service on the same terms and conditions on which he was working on the date of his termination subject to the revision of pay scale from time to time. As the workman has not worked for the pretty long time, considering the facts and circumstances of the case and injustice caused to the workman by illegal act of the

bank, the workman will be entitled for half of the wages from the date of his termination till his joining in the bank. The management of the bank is directed to reinstate the services of the workman within a month time. Accordingly this reference is answered. Let the Central Government be informed. File be consigned.

G.K. SHARMA, Presiding Officer

नई दिल्ली, 8 सितम्बर, 2008

का. आ. 2787.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेट बैंक ऑफ पटियाला के प्रबंधन के संबंध में निर्यात और उनके कर्मचारियों के बीच अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण चण्डीगढ़-नं.-1 के पंचाट (संदर्भ सं. 07/1990) को प्रकाशित करती है, जो केन्द्रीय सरकार को 08-9-2008 को प्राप्त हुआ था।

[सं. एल-12012/286/1989-आईआर(बी-3)]

बी.के. मनचन्दा, अनुभाग अधिकारी

New Delhi, the 8th September, 2008

S.O. 2787.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. 07/1990) of the Central Government Industrial Tribunal-cum-Labour Court, No. 1 Chandigarh as shown in the Annexure, in the Industrial Dispute between the management of State Bank of Patiala, and their workmen, received by the Central Government on 08-9-2008.

[No. L-12012/286/1989-IR(B-3)]

B.K. MANCHANDA, Section Officer

ANNEXURE

BEFORE SHRI GYANENDRA KUMAR SHARMA,
PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-1,
CHANDIGARH

Case No. I.D. 7/90

General Secretary, State Bank of Patiala, Staff Union, 719,
Sector 22-A, Chandigarh.

— Applicant

Versus

General Manager (Operation), State Bank of Patiala, Mall
Road, Patiala (Punjab)

— Respondent

APPEARANCES

For the workman: Sh. Hardyal Singh.

For the management: Sh. N.K. Zakhmi.

AWARD

Passed on 26-8-2008

Government of India vide notification No. L-12012/286/1989-IR(B-3) New Delhi dated 10th of January, 1990 referred the following industrial dispute for judicial adjudication:—

"Whether the action of the State Bank of Patiala in dismissing Sh. Santokh Singh, Watchman/Peon at Bhadson Branch w.e.f. 12-3-88 is legal and justified? If not, to what relief the concerned workman is entitled and from what date?"

From the pleadings and other materials on record, it is evident that the workman was charge sheeted on 11-3-87 for two charges. Firstly, for having Rs. 1300/- on 4-3-1986, from Sh. Avtar Singh, a depositor to the branch for depositing the same into a Saving Bank Account No. 550 of Sh. Avtar Singh and his wife Smt. Jaswant Kaur. The amount was not deposited and the fictitious cash entry of the said amount was made by the workman in the pass-book of the depositor and also in the ledger account of the branch to conceal fictitious cash entry already made in the ledger account. Thereafter, it was detected that the said amount of Rs. 1300 was not deposited by the workman and the same was kept for his own advantage. Secondly, on the basis of the amount of Rs. 700 given to the workman by Sh. Buta Singh, Peon of Government High School, Kartarpur, the workman made a cash entry on 25th June, 1985, in the saving bank pass-book of Account No. 48 maintained at the branch in the name of Sh. Kewal Singh, and the cash balance in the account was raised by Rs. 700. The fictitious entry was also made of the said amount by the workman in ledger account of the depositor. On the detection of this fraud, the workman tallied the saving bank compliance book of ledger No. 1 for the period of September, 1985 to March, 1986. On his transfer to another branch in the month of April 1996, he made a fictitious entry of Rs. 700 in the saving bank account No. 4, in a fraudulent manner in between the entries dated 22-3-1986 and 8-4-1986 to conceal fraud. On 21-5-86, the workman once again visited the branch and deposited Rs. 700 in this Account No. 4, whereas, this amount was not given by the depositor to bring the compliance of the account at the correct level in an fraudulent manner by tampering the records of the bank, thus, causing the fraud with the bank and the customers of the bank.

The workman replied to the charge-sheet which was found unsatisfactory to the management. An enquiry officer was appointed. After conducting the inquiry, the enquiry officer gave his finding on both of the charges as proved. The disciplinary authority issued a show-cause notice dated 29-1-88 proposing the penalty of dismissal from service. The workman answered the show-cause notice. The disciplinary authority after considering the enquiry report, other materials on record and the answer to show cause notice, dismissed the workman from the service vide order dated 6-6-88. The workman preferred an appeal which was dismissed by the appellate authority.

On the basis of the pleadings of parties and other materials on record, the main questions for determination for this Tribunal are as follows:

1. Whether the inquiry was conducted in a reasonable, fair and proper manner and in compliance of the principle of natural justice?
2. Whether the inquiry officer rightly held both of the charges as well proved?
3. Whether the disciplinary authority has rightly passed the punishment of dismissal of the workman from the services?

Entire inquiry file is before me. I have gone through the inquiry report and the proceedings. The main contention of the workman regarding conducting inquiry is that he was not given an opportunity to cross-examine the two witnesses, namely, the complainant Sh. Amar Singh having the joint account with his wife Smt. Jaswant Kaur and the expert witness, Gyan Prakash Sharma. On perusal of inquiry file, it is evident that Amar Singh was examined by the enquiry officer as PW5. The cross-examination could not take place on the same day and the enquiry was adjourned for 26th and 27th of October, 1987. Thereafter, Sh. Amar Singh could not attend the inquiry proceedings for cross-examination and the enquiry officer failed to ensure the presence of Amar Singh for cross-examination. On perusal of the inquiry report, it is evident that no weightage by enquiry officer has been given to the evidence of Sh. Amar Singh. It shows that enquiry officer considered the examination of Sh. Amar Singh as non-existent and no prejudice was caused to the workman for non examination of Sh. Amar Singh. By this Tribunal, it will be considered that no examination of Sh. Amar Singh was recorded while adjudicating this reference.

I have gone through the enquiry proceedings in which the statement of Sh. Gyan Parkash Sharma PW4 was recorded. The representative of the workman was very well present on that day. The opportunity was given to him for cross-examination, but this witness was not cross-examined without any reasonable cause. It was within the purview of the enquiry officer to offer the opportunity of being heard to the workman and his representative, Sh. S.L. Sharma to cross-examine PW4, Sh. Gyan Parkash Sharma. But this witness was not cross-examined and in the opinion of this Tribunal, it cannot be said that there was any violation of the principle of natural justice because the opportunity was afforded which was not availed by the workman or his representative. As the opportunity was given no prejudice is caused to the workman. There were latches on the part of workman and accordingly, he cannot make it as a ground for challenging the enquiry proceedings.

On perusal of entire materials on record, I am of the view that on giving the charge-sheet, the workman was asked to explain the same. After his explanation, enquiry officer was appointed and the copy of the letter appointing the enquiry officer was duly served upon the workman. The materials on record also reveals that the enquiry officer at every stage afforded the full opportunity of being heard to the workman and after conducting the enquiry, report

was submitted to the disciplinary authority. Thus, I found no procedural error in conducting the inquiry and in the opinion of this Tribunal, the enquiry conducted by the inquiry officer is a fair, reasonable and proper and there seems no violation of any principles of natural justice in conducting the inquiry.

The next question for determination is whether the enquiry officer rightly reached to the conclusion on both of the charges being well proved. The main contention of the workman is that both of the account holders relating to both of the charges were not examined by the enquiry officer and it is sufficient to quash the inquiry on the ground of violation of principle of natural justice. The 3 Judges bench of Hon'ble the Apex Court in State of Haryana and another Vs. Rattan Singh, 1977 (2) LLN has observed as under:

"In a domestic enquiry, the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. Departmental authorities and Administrative Tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act. The essence of judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice. Fairplay is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment vitiate the conclusions reached, such finding, even though of a domestic tribunal cannot be held good. The simple point is, was there some evidence or was there no evidence not in the sense of the technical rules governing regular Court proceedings but in a fair common sense way as means of understanding and worldly wisdom will accept. Viewed in this way, sufficiency of evidence in proof of the finding by a domestic Tribunal is beyond scrutiny. Absence of any evidence in support of a finding is certainly available for the Court to look into because it amounts to an error of law apparent on the record."

In this very judgment, Hon'ble the Apex Court has held that in the domestic inquiry even there should be no allergy to the hearsay evidence provided it has reasonable nexus and credibility. The word of caution has also been given by Hon'ble the Apex Court that departmental authorities and Administrative Tribunals must be careful in evaluating such materials and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act. The essence of judicial approach is objectivity, exclusion of extraneous materials or considerations and observance rules of natural justice.

Applying the above mentioned principles of law laid down by Hon'ble the Apex Court in the instant case, it is

evident that apart from the evidence adduced by the bank witness before the enquiry officer, it is the own version of the workman that he took a loan of Rs. 1300 from Sh. Avtar Singh through his neighbour shopkeeper. Thus, there is a close nexus of taking Rs. 1300 from Sh. Avtar Singh and not depositing the same to the bank. Workman failed to prove, even by prima facie that he took the loan from Sh. Avtar Singh and it was returned? Apart from it, the entries made by the workman in the pass-book, ledger and loan book are unexplained whereas, it is proved that entries regarding these 1300 rupees and 700 rupees were made by the workman. As stated earlier, there shall be no effect of the fact that workman has not cross-examined the expert witness, PW4 adduced by the management bank before the enquiry officer as he has afforded full opportunity to the workman through his representative, properly appointed to cross-examine the witness.

I have gone through the evidence of the employees of the bank who had been working with the bank throughout the period in question. They have categorically mentioned how this fraud was committed. Relevant documents are also on record containing the entries of Rs. 1300 and 700 as mentioned above. Thus, there is a great nexus between the evidence on the record and the charges leveled against the workman and these nexus are not beyond the principles of evidence as contained in the Indian Evidence Act. The evidence of Sh. Avtar Singh was not considered by the enquiry officer and, while answering this reference I am not considering the chief examination of Avtar Singh on the principle mentioned above. The enquiry officer has rightly given the finding of both of charges as well proved. The disciplinary authority after giving an opportunity of being heard to the workman, dismissed him from service and in my opinion, there is no substance to interfere with the finding of the disciplinary authority.

It is the law that the punishment to the workman should be in proportionate to the misconduct committed by him. Whether the punishment is in proportionate to the committed misconduct, has to be decided on the basis of facts and circumstances of each case? No parameter in this regard can be framed as two instances of misconduct cannot be repeated in the same way and manner. In the instant case, the misconduct is regarding the fraud committed with an account holder of the bank and fraudulent entries made in the documents of bank and tampering of few entries. By such type of acts, the confidence of the bank in the employee is bound to be lost and the confidence of the people in the financial institution, like bank, is also at stake. Accordingly, in such types of cases, it was rightly decided by the disciplinary authority that it is not proper to continue the services of the workman with the bank and he was rightly dismissed from the service. The reference is accordingly answered in positive that the action of the State Bank of Patiala in dismissing Sh. Santokh Singh, Watchman/Peon at Bhadson w.e.f. 12-3-88 is legal and justified and the workman is not entitled to any relief. Let the file be consigned. Central Government be informed.

G. K. SHARMA, Presiding Officer

नई दिल्ली, 8 सितम्बर, 2008

का.आ. 2788.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं.-1, चण्डीगढ़ के पंचाद (संदर्भ सं. 179/97) को प्रकाशित करती है, जो केन्द्रीय सरकार को 8-9-2008 को प्राप्त हुआ था।

[सं. एल-12012/373/1996-आईआर(बी-11)]

राजिन्द कुमार, डेस्क अधिकारी

New Delhi, the 8th September, 2008

S.O. 2788.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 179/97) of the Central Government Industrial Tribunal-cum-Labour Court, No. 1 Chandigarh as shown in the Annexure, in the Industrial dispute between the management of PNB, and their workmen, received by the Central Government on 8-9-2008.

[No. L-12012/373/1996-IR(B-II)]

RAJINDER KUMAR, Desk Officer
ANNEXURE

BEFORE SHRI GYANENDRA KUMAR SHARMA,
PRESIDING OFFICER, CENTRAL GOVT.
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-1,
CHANDIGARH

Case No. LD 179/97

Sh. Trilok Chand Sharma, C/o Sh. Gain Chand Sharma,
H. No. 364, Dhangu Pir, Pathankot

... Applicant

Versus

Punjab National Bank, The Regional Manager, PNB,
Regional Office, Kapurthala.

... Respondent

APPEARANCES

For the workman: Sh. O.P. Sharma

For the management: Sh. S.K. Verma

AWARD

Passed on 2-9-2001

The Government of India vice notification No. L-12012/373/96/IR(B-II) dated 29-8-97, has referred the following industrial dispute for judicial adjudication:—

"Whether the action of the management of Punjab National Bank in terminating the services of Shri Trilok Chand S/o Lok Singh Ram Sharma w.e.f. 2-4-94 are legal and justified? If not, to what relief the concerned workman is entitled and from what date?"

The dispute, as is clear from the pleadings of the parties, is that the workman was charge-sheeted on 27-3-92 for his mis-behavior with Shri S.K. Mehra in Computer Cabin on 3-2-92 and for mis-behaviour and marpeet with the canteen boy on 22-1-92. There is one more charge sheet dated 29-10-92 regarding the misbehavior and marpeet with canteen boy on 25-8-92 and the workman was supposed to reply the charge sheet within 3 days.

On 2-2-93 enquiry officer was appointed and the enquiry officer after conducting the enquiry gave the report of enquiry on 14-8-93, holding the charge regarding the misbehavior and marpeet with canteen boy on 25-8-92 as well proved and further holding that the charge levelled against workman vide charge sheet dated 27-10-92 has not been proved. Thus, out of the two charges, as per the enquiry report, only one charge that on 22-1-92 he misbehaved and committed marpeet with canteen boy is held to be proved by the enquiry officer.

On the basis of the enquiry report the disciplinary authority issue show cause notice and an opportunity for personnel hearing on the proposed punishment of dismissal from service without notice was also given. The workman did not turn up in the personnel hearing, hence, the disciplinary authority in his absence vide letter dated 2-4-94 confirmed the proposed punishment of dismissal from the services. The workman preferred an appeal which was dismissed by the appellate authority.

I have heard learned counsels for the parties and pursued the entire materials on record. It is the case before this tribunal where principles of natural justice were not followed. Out of three charges, it was held by the enquiry officer that one charge is well proved. For the charge which is said to be well proved, the complainant whose complaint is on record was not summoned by the enquiry officer for recording his statement and he was not subjected to the cross-examination. The statement of canteen boy was recorded and the statement of some bank employee was also recorded, but no opportunity for cross-examination was given to the workman. Accordingly, the enquiry proceedings and the enquiry report have no legs to his stand. This tribunal has also afforded the opportunity to adduce the evidence. The evidence which is adduced by the management, is not sufficient to prove the charge leveled against the workman that he misbehave and committed 'marpeet' with the canteen boy. One of the enquiry report dated 14-8-93 is summarily closed with the finding that the workman has admitted his guilt and no further action is required.

The workman has written two letters to the enquiry officer on 20-5-93 and 3-8-93. On 20-5-93 he has informed the enquiry officer that neither he has mis-behaved the canteen boy nor committed any 'marpeet' with him. On 3-8-93 he has written that he has not misbehaved or committed 'marpeet' with the Canteen boy. Moreover, if he has committed any wrong he is sorry for that. The enquiry officer has treated this letter dated 3-8-83 as admission, whereas it cannot be treated as admission for charges leveled against him because in the first part of the letter he has refused for incidents of 'marpeet' and misbehavior with the canteen boy and alternatively he has said sorry for that incident which has took place. The whole letter is to be taken jointly. It shows that the intention of writing this letter is not to admit the charge leveled against him but to overcome with the enquiries. There is no evidence on record which proved the charges against the workman,

as, the evidence which was recorded by the enquiry officer has not been subjected to the cross-examination by the workman. Hence, it cannot be relied upon because it was against the principle of natural justice. In fact this is the case of no evidence and the termination of the workman from the services is not legal and justified.

On the above observation I am of the view that enquiry was not properly conducted. It was conducted in violation of Principles of natural justice. Enquiry officer has given the report on the basis of surmises and conjecture without evidence and the disciplinary authority awarded the punishment summarily. Accordingly, this is the case of no evidence and termination is not sustainable.

Now the question before this tribunal is to what relief the workman is entitled? In the cases where the termination is against the law, there are two possible remedies before this Tribunal. The Tribunal can order to reinstatement to the workman in service and the alternative remedy is that the Tribunal can go for the order of compensation. The workman is not working with the bank from last 14 years. He was ex-service-man and his reinstated to the service will not be proper in the end of the justice. Thus, while answering this award, I am opting the second alternative for the reasonable compensation to the workman for his wrongful termination from the services.

Hon'ble the Apex Court in the following cases as held that the compensation can also be given by the Tribunal in appropriate cases:

- (1) Jaipur Development Authority Vs. Ram and another, 2006 (111) FLR 1178, SC.
- (2) Madhaya Pradesh Administration Vs. Tribunal, 2007 (113) FLR 886, Supreme Court 3,
- (3) Uttaranchal Forest Development Corporation Vs. M.C. Joshi 2007 (113) FLR 191 Supreme Court.

All the above mentioned case laws have been discussed by Hon'ble the Apex Court in Sita Ram and another Vs. Motilal Nehru Farmers Training Institute, 2008 (117) FLR 1191 in which the Hon'ble Apex Court has also awarded the compensation instead of reinstatement of the workman into the service.

Considering the wages the workman was receiving at the time of his termination, the period from termination to the disposal of this case, I am of the view that Rs. 75,000 (seventy five thousand) as compensation will meet the ends of justice. Accordingly, the management of the bank is directed to pay the compensation of Rs. 75,000 (seventy five thousand) to the workman within a month failing which the workman will also be entitled for the interest at the rate of 8 per cent per annum on the said Rs. 75,000 (seventy five thousand), from the order of this Tribunal till final payment. The reference is answered accordingly. Let the Central Government be informed. File is consigned.

G.K. SHARMA, Presiding Officer

नई दिल्ली, 8 सितम्बर, 2008

का.आ. 2789.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्पॉल इण्डस्ट्रीज डेवलपमेंट बैंक ऑफ इण्डिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं.-1, चण्डीगढ़ के पंचाट (संदर्भ सं. 11/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 08-9-2008 को प्राप्त हुआ था।

[सं. एल-12012/128/2005-आईआर(बी-11)]

राजिन्दर कुमार, डेस्क अधिकारी

New Delhi, the 8th September, 2008

S.O. 2789.—In pursuance of Section 17 of the Industrial Disputes Act, 1947(14 of 1947), the Central Government hereby publishes the award (Ref. 11/2006) of the Central Government Industrial Tribunal-cum-Labour Court, No.1 Chandigarh as shown in the Annexure, in the Industrial Dispute between the management of Small Industries Development Bank of India, and their workmen, received by the Central Government on 08-9-2008.

[No. L-12012/128/2005-IR(B-11)]

RAJINDER KUMAR, Desk Officer

ANNEXURE

BEFORE SHRI GYANENDRA KUMAR SHARMA,
PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-1,
CHANDIGARH

Case No. I.D. 11/2006

Shri Dalvinder Singh S/o Shri Prem Chand, R/o H.No 580,
Phase-1, Ram Darbar, Chandigarh.

...Applicant

Versus

The Deputy Manager, Small Industries Development Bank
of India, SCO No. 145-146, Sector-17-C, Chandigarh

...Respondent

APPEARANCES

For the workman : Sh. R. K. Gautam Advocate

For the management: Sh. A. K. Bakshi Advocate

AWARD

Passed on 22-8-08

Central Government vide notification No. L-12012/
128/2005/IR(B-II) dated 20-4-2006, has referred the following
dispute to this Tribunal for adjudication:-

"Whether any employer-employee relationship exists between the management of small industries Development Bank of India, Chandigarh and Shri Dalvinder Singh? If yes, whether the action of the management of Small Industries Development Bank of India, Chandigarh in terminating the services of Shri Dalvinder Singh, Ex-Sweeper, w.e.f. 06-04-2005 is just and legal? If not, to what relief the workman is entitled to?"

2. The present reference was made by the Central Government on the failure of conciliation proceedings for adjudication of the matter referred in the schedule referred

above and the workman prayed for declaring the action of the management as illegal and invalid and for reinstatement in service with full backwages and all consequential benefits in the interest of justice, equity and fair play.

The management turned up and opposes this application.

As per office memorandum dated 30-4-08 this case was fixed in pre lok adalat meeting on 22-8-08 for its disposal by adopting the mediation and conciliation mechanism. With the efforts of the Tribunal, the workman agreed to withdraw his reference. Both the workman and the management made a statement that management agreed to give work to the workman through contractor w.e.f. 1-4-09 and workman withdraw the reference. It is propose to dispose off this reference in Lok Adalat. Accordingly the reference is returned to the Central Government settled in Lok Adalat. Central Government be informed. File be consigned to record.

Chandigarh
25-8-08

G.K. SHARMA, Presiding Officer

नई दिल्ली, 8 सितम्बर, 2008

का. आ. 2790.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार केनरा बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं.-1, चण्डीगढ़ के पंचाट (संदर्भ सं. 105/93) को प्रकाशित करती है, जो केन्द्रीय सरकार को 08-9-2008 को प्राप्त हुआ था।

[सं. एल-12012/105/93-आईआर(बी-11)]

राजिन्दर कुमार, डेस्क अधिकारी

New Delhi, the 8th September, 2008

S.O. 2790.—In pursuance of Section 17 of the Industrial Disputes Act, 1947(14 of 1947), the Central Government hereby publishes the award (Ref. 105/93) of the Central Government Industrial Tribunal-cum-Labour Court No.1, Chandigarh as shown in the Annexure, in the Industrial dispute between the employers in relation to he management of Canara Bank, and their workmen, which was received by the Central Government on 08-9-2008.

[No. L-12012/105/93-IR(B-II)]

RAJINDER KUMAR, Desk Officer

ANNEXURE

BEFORE SHRI GYANENDRA KUMAR SHARMA,
PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-1,
CHANDIGARH

Case No. I.D. 105/93

Smt. Padma Sharma, No. 368, Sector-32-A, Chandigarh-
160034.

...Applicant

Versus

The Deputy General Manager, Canara Bank, Sector-34,
Chandigarh-160032.

...Respondent

APPEARANCES

For the workman: Sri M.L. Basoor

For the management: Sri N.K. Zakhmi

AWARD

passed on 2-9-2008

Government of India vide notification No. L-12012/105/93/TR(B-II) dated 2-9-93, has referred the following dispute to this Tribunal for adjudication :—

"Whether in the circumstances of the case, dismissal of workman Smt. Padma Sharma, Special Assistant is justified? If not, to what relief the workman is entitled to?"

From the pleadings of the parties, it is evident that Smt. Padma Sharma was charge sheeted by the Canara Bank as follows:—

Charge-I :— On 23-5-1988, she had borrowed a sum of Rs. 10,000/- from one Mr. C. J. Alwares an SB A/c Holder of Solan Branch with a promise to repay the same in Oct./Nov. 1988. On 16-10-88 and 21-10-88, she has fraudulently made two fictitious credit for Rs. 5,000/- each in the pass book of Shri Alwares to make it appears that she has deposited the amount to the SB A/c of Shri Alwares and also falsified the relevant ledger

Charge-II :— Smt. Shakuntala Bansal, mother and guardian of Master Ankush Bansal availed VSL of Rs. 5,000/- against KDR 23/82 for Rs. 7,000 and the KDR duly discharged was pledged to the bank. She has received cash towards the VSL liability during June/July, 1987, but did not deposit the cash to credit of VSL A/c. Later, she remitted Rs. 3300 on 26-5-89, Rs. 5,000 on 8-6-89 and Rs. 147.35 on 29-6-89 towards clearance of full liability. Further she had released the pledged KDR 23/82 before closing the VSL liability.

Charge-III :— On 31-10-88, Mrs. Usha Kapoor handed over Rs. 3,000/- to Smt. Padma Sharma for being deposited into her SB A/c 1900. Smt. Padma Sharma did not deposit the same immediately but made fictitious credit of Rs. 3,000 in the pass book and ledger on 31-10-88 and also passed a cheque for Rs. 2,000 for payment based on the fictitious credit. She had deposited amount only on 16-11-88.

Charge-IV :— On 14-6-99, Smt. Sharma had borrowed Rs. 10,000 from one Sri Pushkar Verma on SB A/c holder of Solan Branch. On 2-11-88 when the account holder insisted for repayment, She had made two fictitious credit entries of Rs. 5,000 each in the account of Shri Pushkar Verma and also tampered with the bank records.

Charge-V :— On 27-9-86, she had made fictitious credit entry for Rs. 150 in the SB A/c 2680 of Smt. Sheela without there being any actual credit.

The copy of the charge sheet was provided to the workman Smt. Padma Sharma and the enquiry was ordered to be conducted. On the first day of the enquiry proceedings, Smt. Padma Sharma, the workman denied the charges as is clear from the proceedings of enquiry dated 9-9-89. But on the subsequent date on 17-10-89, she admitted all the charges except the charge no. 2. The letter

written and signed by the workman dated 17-10-89, addressed to the enquiry officer is on record as D.E. I.

The enquiry officer conducted the enquiry and submitted his reports on the basis of the admission of the workman and on the evidence adduced by the management holding all the charges well proved except the charge No. 2 which the enquiry officer held as partly proved. The disciplinary authority, issued a show cause notice vide letter dated 6-11-89 and the proposed punishments were mentioned in letter/show cause notice itself. The workman answered it and also availed the opportunity of personnel hearing. Thereafter, the disciplinary authority approved the proposed punishments dismissing the workman for the services.

The workman preferred an appeal which was dismissed by the appellate authority, Zonal Manager of the bank on 5-2-1990.

The workman has challenged the above proceedings on the ground that the enquiry was not fairly conducted by the enquiry officer, who was not competent to conduct the enquiry. The confessions made by her were not voluntary but on the advice of the enquiry officer with promise for the light punishment. No opportunity of being heard was given to the enquiry officer and the enquiry suffers for violation of principle of natural justice.

I have heard learned counsel for the parties and pursued the entire materials on record. The main question for determination before this Tribunal are as follows:—

- (1) Whether the enquiry officer conduct the enquiry in a fair, reasonable and proper manner and there was no violation of principle of natural Justice ?
- (2) Whether the confessions by the workman before the enquiry officer were voluntary made ?
- (3) Whether the enquiry officer has rightly given the finding on all the charges as proved except charge no. 2, to which he held as proved partially ?
- (4) Whether the disciplinary authority has applied his mind properly and the punishment given to the workman was not proportionate to the misconduct ?

So far as the procedural part of the enquiry is concerned, the enquiry officer was duly appointed as per the regulations of the bank and the procedure which was adopted by the enquiry officer seems to be fair and reasonable procedure. I have perused all the proceedings of enquiry from which it is clear that on all the dates a reasonable opportunity was given to the workman. Opportunity for adducing evidence in defense was also given. The workman refused to submit any written submissions, but thereafter, she preferred to file the written submissions as well. The enquiry officer after going through the submissions of the management and the workman, gave the finding in the form of enquiry report. Thus, the enquiry officer was duly appointed and he adopted fair and reasonable procedure while conducting the enquiry and there seems no violation of the principle of natural justice.

The next question before this Tribunal is whether the confessions which she made before the enquiry officer

were genuine and free. On perusal of the materials on record, it is evident that on the first date of the enquiry the workman denied the charges, but on the very next date she filed a letter admitting all the charges except charge No. 2. On the basis of her letter the enquiry officer asked certain questions which she replied positively. She asserted before the enquiry officer that she has admitted the charges voluntarily. I have gone through the letters written by the workman admitting the charges. The language she has used while writing the letters, admitting the charges, shows that it was voluntary act of the workman. There was no pressure or commitment of any type by enquiry officer upon/to the workman. This fact is also corroborated by another fact that at the end of the enquiry proceedings, the workman refused to file any written submissions, but she filed detailed written submissions consisted of 12 pages. I have gone through the entire written submissions. She has admitted the charges levelled against her except the charge No. 2. In this letter she has not only confine herself with the charges levelled against her but also written about her childhood, her education, her family background and circumstances under which she has committed the wrong. Thus, I am unable to accept the contention of the workman that she has not voluntarily admitted the charges levelled against her. There was no occasion for pressurization by the enquiry officer when the workman has previously admitted all the charges and refused to file any written submissions and of her own, she preferred to file the written submissions admitting once again the charges leveled against her. Thus, I am of the view that the workman has voluntarily admitted all the charges levelled against her.

Moreover, the enquiry officer has pursued all the evidence oral and documentary, while concluding the enquiry. The enquiry officer has categorically examined all the documents for every charge and has also considered the oral evidence given by the management witness, apart from the admission letter. As more as 12 documents were placed and proved for charge No. 1, 14 documents for charge no 2, 10 documents for charge No. 3, 5 documents for charge no. 4, 4 documents for charge no. 5, and 4 documents for charge No. 6, before the enquiry officer which were marked exts. Most of the documents which were filed are common for all the charges. I have pursued all these documents and gone through the oral evidence of the parties as well.

The charges against the workman are regarding taking of loans from the persons having business with the bank. Non-payment of these advances within the agreed time and, thereafter, making entries in the records with intention to show that she has deposited the amount in their accounts, are two different facts. She borrowed Rs. 10,000 from Mr. C.J. Alwaress having a/c no. with the bank. She instead of repayment the same make two fictitious credit entries for Rs. 5,000 each on 16-10-88 and 21-10-88 in the pass book of Shri Alwaress and also falsified the relevant ledger of the bank. Taking of advance from the person having business with the bank is prohibited. Even if, it is taken, it may not constitute so serious misconduct as tempering the records for assuring the parties that she has already returned the amount. This act of tempering

the record is fraud with the bank. The evidence which was placed before the enquiry officer proved these charges. Moreover, the workman voluntarily admitted all the facts including the tempering the records of the bank. Likewise, on other charges, No. 3 for non depositing Rs. 3,000 in the amount of Mrs. Usha Kapoor and making fictitious entries in the pass book and ledger, borrowed Rs. 10,000 from Shri Puskar Verma and made two fictitious credit entries for 5,000 each in a/c of Sh. Puskar Verma and tempered the other records are also proved. She also made fictitious credit entry for Rs. 150 in the account of Smt. Silla without their being actual credit. All these charges are proved through documents, mentioned earlier, and the oral evidence adduced by the management before the enquiry officer. Moreover, the workman has voluntarily admitted these charges as well. On charge No. 2, the enquiry officer has rightly held that it is partly proved because the workman was not in charge of the concerned branch and not working at the relevant time. Accordingly, the enquiry officer has rightly give the finding after perusal of the entire records, on all the charges as well proved except charge No. 2.

The enquiry officer has himself suggested the punishment to be given in the enquiry report, and I think on perusal of the entire materials on record, it is not against the provisions of law and the workman is not prejudiced by this act of the enquiry officer.

The enquiry officer in his enquiry report has also shown some lenient attitude for awarding punishment. On page no. 17 of the enquiry report, it is mentioned that there seems to be some valid reasons in the submissions made by the workman and it appears that she was not adhering to the system and procedure. It is also held in the enquiry that it appears that though there was no motive on the part of C.S.E. to defraud the customer or the bank, yet her action in making the entry in the pass-book deserves to be reprehended. After this finding the enquiry officer has proposed her dismissal from the services on the charges No. 1, 3, 4 and 5 and stoppage of 4 increments with cumulative effect on charge No. 2. It shows that while giving the finding, the enquiry officer was of the view that the act committed by the workman were not intentionally to defraud with the bank or the customer, thereafter, in the same enquiry report he proposed the punishment of dismissal from the service considering the nature and the gravity of the charges.

The workman was working in a financial institution where the highest degree of integrity, honesty is required and needed. There is a difference, between he negligent act and the act affecting the dignity and integrity of an employee. The workman has tempered with the records of the bank to show the borrowers that she has returned the amount and by this act she has not only act against the interest of borrowers but against the interest of the bank. Thus, the workman was rightly terminated from the services of the bank, and in my opinion, this tribunal has no occasion and reason to interfere in the finding of the enquiry officer and disciplinary authority while discussing on the punishment part. The reference is answered accordingly. Let the Central Government be informed. File is consigned.

G. K. SHARMA, Presiding Officer

नई दिल्ली, 8 सितम्बर, 2008

का.आ. 2791.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसार में, केन्द्रीय सरकार सेंट्रल बैंक ऑफ इण्डिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकों के बीच अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, चण्डीगढ़ के पंचाट (संदर्भ संख्या 153/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 8-9-2008 को प्राप्त हुआ था।

[सं. एल-12012/187/2000-आईआर(बी-1)]

राजिन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 8th September, 2008

S.O. 2791.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 153/2001) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No.-1, Chandigarh as shown in the Annexure in the Industrial Dispute between the management of CBI, and their workmen, received by the Central Government on 8-9-2008.

[No. L-12012/187/2000-IR (B-I)]

RAJINDER KUMAR, Desk Officer

ANNEXURE

**BEFORE SHRI GYANENDRA KUMAR SHARMA
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT-1, CHANDIGARH**

Case No. I.D. 153/2001

Sh. Shankar Lal Thakur S/o Sh. Mast Ram Thakur
R/o Village Tukana, P.O. Manjhu, Teh: Arki Solan
(Himachal Pradesh) 173212.

...Applicant

Versus

Central Bank of India, The Regional Manager, CBI, Timber
House, Cart Road Shimla (Himachal Pradesh) 171001.

...Respondent

APPEARANCES

For the workman : None

For the management: Shri Yash Pal Dhiman

AWARD

Passed on 2-9-08

The Central Government vide notification No. L-12012/187/2000-IR(B-I), dated 28-3-2001, has referred the following dispute to this Tribunal for adjudication:

"Whether the action of the management of Central Bank of India in terminating the services of Sh. Shankar Lal Thakur S/o Sh. Mast Ram Thakur

w.e.f. 4-3-1999 is just and legal? If not what relief the workman is entitled to?"

2. No one is present, on behalf of workman. Learned representative of the management Shri Yash Pal Dhiman is present. Since morning this reference has been called number of times. At 10.45am, it was ordered to be placed before this Tribunal once again at 2 pm. It is 2.30 now and on repeated calls no one is present, in spite of having of full knowledge of the proceedings of this reference. The reference is as old as referred to this Tribunal in the year 2001. On repeated calls since morning no one is present. Accordingly, the reference is dismissed in default for non-prosecution. Central Government be informed accordingly. File to be consigned.

Chandigarh
2-9-08

G.K. SHARMA, Presiding Officer

नई दिल्ली, 8 सितम्बर, 2008

का.आ. 2792.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसार में, केन्द्रीय सरकार ओरिएण्टल इंसुरेंस कंपनी लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकों के बीच अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, चण्डीगढ़ के पंचाट (संदर्भ संख्या 153/1994) को प्रकाशित करती है, जो केन्द्रीय सरकार को 8-9-2008 को प्राप्त हुआ था।

[सं. एल-17011/30-94-आईआर(बी-1)]

राजिन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 8th September, 2008

S.O. 2792.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Reference, No. 153/1994) of the Central Government Industrial Tribunal-cum-Labour Court No.-1, Chandigarh as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Oriental Insurance Company Ltd. and their workmen, which was received by the Central Government on 8-9-2008.

[No. L-17011/30-94-IR (B-I)]

RAJINDER KUMAR, Desk Officer

ANNEXURE

**BEFORE SHRI GYANENDRA KUMAR SHARMA
PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-1,
CHANDIGARH**

Case No. I.D. 153/94

Madan Lal S/o Sh. Bodhraj Village Kotla Camp, P.O. Thiva
Tehsil Bishana Distt. Jammu

...Applicant

Versus

Divisional Manager, The Oriental Insurance Company Ltd.
Town Hall Building, Jammu.

....Respondent

APPEARANCES

For the workman : Sh. Sukdev Singh Kanwal
For the management: Sh.R.K. Chopra

AWARD

Passed on 26-8-08

Government of India vide notification No. 17012/30/94, New Delhi dated 8th November, 1994 referred the following industrial dispute for judicial adjudication:—

“Whether the action of the management of Oriental Insurance Company Ltd., Jammu in terminating the services of Sh. Madan Lal sub-staff w.e.f. 22-1-93 is legal and justified? If not, what relief is the said workman entitled to?”

As per the statement of claim of the workman, the workman was engaged with the Oriental Insurance Company Ltd. on 31-12-91 and he worked up to his termination from the services by the company on 22-1-93. His services were terminated without the notice and retrenchment compensation against the provisions of Industrial Disputes Act. He has also claimed to complete 240 days of working continuously with the management proceeding to the date of his termination.

The Management of respondent insurance company opposed it. As per the written statement of the management of the respondent company, the workman only worked for 2 months on contract basis for January, 1992 and March, 1992 for which he was paid. Prior to this, and after March, 1992 the workman has not worked with the management of the respondent company, hence, no question of termination or retrenchment compensation arise. It has also been alleged by the management of respondent that workman has not completed 240 days of work with the management, so there is not question of violation of any provisions of Industrial Disputes Act.

Both of the parties were afforded the opportunity for adducing evidence. They did so. The evidence of workman Sh. Madan Lal was recorded as WW2 whereas, Raj Kumar Verma, Manager (Accounts), R.S. Pura, Jammu deposed as WW1. On the other hand, Jaswinder Singh Assistant Manager of respondent insurance company was examined as MW1. Certain documents were also filed by the parties. The workman filed the photo-copies of certain cheques to show that he worked with the management of respondent company even before or after January, 1992 and March, 1992. These photo-copies are duly attested.

The management on the direction of this Tribunal, filed two vouchers dated 7-2-92 and 31-3-92.

I have heard learned counsels for the parties and perused the entire material on record. The management of respondent has also filed the written arguments and certain case laws. From the vouchers filed by the management and from the pleadings of the parties, it is evident that workman was engaged for some time with the management of respondent and he was paid monthly. The vouchers Ex.M2 and Ex.M3 show the mode of payment of wages to the workman in the month of January, 1992 and March, 1992 respectively. These vouchers show that he was paid 450 Rs. per month.

Now the question before this Tribunal is whether the workman worked only for 2 months, namely January, 1992 and March, 1992 as alleged by the management of the respondent company or he worked for 240 days continuously preceding to the date of his termination? If so, whether he is entitled for the protection of the provisions of Industrial Disputes Act? The workman Madan Lal has filed certain cheques which are the transaction between the management of respondent company with the Jammu and Kashmir Bank Ltd. and these transactions were made through workman Sh. Madan Lal. The photo-copies of the cheques filed by the workman, Madan Lal has not been denied. The signatures of Madan Lal are also not denied. In the affidavit filed by MW1, there is not a single sentence about these cheques which have been filed by the workman, whereas, this contention of the workman regarding the photo-copies of the cheques was within the knowledge of the management at the time of filing affidavit. Thus, the contention of the workman regarding his working with the management otherwise than January, 1992 and March 1992, which he has shown by filing of photo-copies of certain cheques has not been rebutted by the management of respondent company. Moreover, vide application No.94 dated 16-12-02 workman requested this Tribunal for the direction upon the management of respondent company to file the original cheques, photo-copies of which have been filed by him. Accordingly, this Tribunal issues the direction to file the document as prayed, vide order dated 13-3-05. But the management of the respondent company failed to file the documents as prayed by the workman. The signatures on the photo-copies of the cheques, which are the transactions between the management of respondent company and bank, are not disputed because the management has not denied the same. Moreover, in a recent judgment, published in Sita Ram and Others Vs. Moti Lal Neharu Farmers' Training Institute 2008 (117) FLR-1191, Hon'ble the Apex Court has held that adverse inference can be drawn when employer with-holds records under his exclusive custody. Para 15 of this judgment reads as under:—

"It is evident that the respondents have withheld the best evidence. The wage-sheet, the provident fund records and other documents were in their possession. They were statutorily required to maintain some documents. It may be true that the learned Labour Court did not draw any adverse inference expressly, but, whether such an adverse inference has been drawn or not must be considered upon reading the entire Award. The High Court, in our opinion, has wrongly optioned that the award suffers from an error of law and was otherwise based on surmises and conjectures."

In this case, the originals of the cheques are lying with the concerned bank and the relevant records with the management of insurance company but both refused to file the same being destroyed after the period of limitation. It was the best evidence and was naturally in the custody of the bank/management of the company which they failed to produce. It cannot be expected from the workman to file the original copies of the cheques and the registers containing the entries of cheques to keep with him. In the ordinary course of business, these documents are kept either with the bank concerned or with the management of insurance company. Thus, as per the law laid down by Hon'ble the Apex Court in Para 15 of the Sita Ram's Case (supra), an adverse inference is drawn against the management of respondent insurance company and all these cheques shall be read into evidence. As per the cheques, it is proved before this Tribunal that the workman even worked with the management of respondent insurance company for the month of May, 1992, July 1992, August, 1992, September, 1992, October, 1992 and November, 1992. There are several transactions of the insurance company through the workman in the said months. Thus it is proved by the workman that he has not only worked for 2 months namely January, 1992 and March, 1992. It is not the case of the management of the insurance company that this workman worked with the bank as the outsider and the management of insurance company was in habit to get certain official works done by the outsiders. Even a single evidence has not been tabled by the management of insurance company on these cheques and transactions between the management of insurance company and the bank through the workman. As per the statement of MW-1 in her cross-examination, workman was paid contracted amount. It was verbal that he was working as a casual labour. As per paragraph 5 of the affidavit of the management, the workman was engaged against the vacancy reserved for Schedule Caste candidate and on this vacancy, a Scheduled Caste candidate was appointed thereafter.

On perusal of the records, it is also evident that as per the rules and regulations of the management of respondent the applications were invited for the recruitment of Class IV employee against the permanent vacancy and the workman was also given a chance but he could not

succeed. In this reference, the workman has not challenged the selection procedure. He has only challenged that his termination was in violation of the provisions of Industrial Disputes Act. It is also clear that regular appointment was made very much after the termination of his services.

On the basis of the above discussion and observation, and on perusal of entire materials on the record, I am summarizing the matter as follows:

1. That Sh. Madan Lal was engaged lawfully by the management of respondent insurance company as alleged in Para 5 of the affidavit and in cross-examination of MW-1.

2. That Sh. Madan Lal not only worked for the months of January, 1992 and March, 1992 but he worked before/after March 1992 with the management of respondent insurance company as well.

3. That as per the law laid down in Sita Ram's Case (supra) by Hon'ble the Apex Court, adverse inference is drawn against the management of insurance company that in spite of having all the records pertaining to the transactions between the insurance company and the bank through the workman and relating to the payment of wages to the workman, the management of insurance company failed to produce the same and it is open to this Tribunal to believe that the management of insurance company has deliberately even after having custody of the document not produced the same before this Tribunal with intent to escape from the lawful liability which can be imposed under the provisions of Industrial Disputes Act.

4. Thus, this Tribunal will not hesitate to accept the contention of the workman that from January, 1992 (31-12-91) he worked regularly up to 22-1-93, till the date of his termination from the services.

5. As per the evidence of MM2, Jaswinder Singh, he was paid monthly and it was verbal that he was working as a casual labour. The working of a workman on a contract is not proved by filing the draft of the contract, if any, between the workman and the management. It is further falsified by the statement of MM1 that it was verbal that he was working as casual worker.

6. As the workman was paid monthly, thus, all the days of a month including Sundays and Holidays are to be counted while calculating the working days.

7. On counting the days, it is apparent that the workman has worked more than 240 days with the management of respondent insurance company proceeding to the year from the date of his termination from the services.

8. It is admitted that he was removed from the services without any notice or retrenchment compensation.

On the basis of above findings, I am of the view that removal of the workman from service was illegally being

against the provisions of Industrial Disputes Act. Now the question before the Tribunal is to what relief is the workman entitled? It is proved from the evidence of the parties that the branch in which the workman was working was thereafter closed permanently and the staff was shifted to the adjoining branches. As the permanent staff was shifted to the adjoining branches, it was also a legal right of the workman that he should not have been removed from the services without notice or retrenchment compensation. It is true that he has no right to the post and he is not claiming like that. The workman is not claiming for the regularization of the services nor has he challenged the procedure of selection to which he was also given a chance. The only question is whether his removal from the service is illegal and if it is illegal to what relief he is entitled? In view of the illegal removal from the services there are two possible legal remedies to be provided to the workman.

1. His reinstatement to the services with/without back wages, and on the same terms and condition on which he was working at the time of his termination from services.

2. Payment of compensation.

The order regarding the payment of compensation can also be passed by this Tribunal as laid down by Hon'ble the Apex Court in several judgments, few I am quoting.

1. Jaipur Development Authority vs. Ramsahai and Another 2006 (111) FLR 1178 Supreme Court.

2. Madhya Pradesh Administration vs. Tribunal 2007 (113) FLR 886 Supreme Court.

3. Utranchal Forest Development Corporation vs. M.C. Joshi 2007 (113) FLR 191 Supreme Court.

All the above mentioned case laws have been discussed by Hon'ble the Supreme Court in Sita Ram's Case (supra) and Hon'ble the Apex Court has held that adequate amount of compensation may serve the ends of justice.

It has come to the notice of this Tribunal that the branch in which the workman was working has been closed. There is no vacancy lies with the management of respondent insurance company. Thus in the interest of justice, it will be proper to award the compensation, instead of reinstatement of the workman into the services.

The compensation to be awarded should be based on reasonable and justifiable grounds. At the time of removal from the services, the workman was getting Rs. 450 per month. Thus, on the basis of the wages he was getting at the time of removal from the services, the period of his work and the period from the date he was entitled for the retrenchment compensation and the date of the disposal of this case, I am of the view that Rs. 25,000 will

be a sufficient amount to be awarded to the workman as compensation to meet the ends of justice.

Accordingly, this reference is answered. The management of the respondent insurance company is directed to pay Rs. 25,000 within a month failing the workman will also be entitled to the interest at the rate of 8% per annum from the date of disposal of this reference till actual payment. Central Government be informed. File be consigned.

G.K.SHARMA, Presiding Officer

नई दिल्ली, 8 सितम्बर, 2008

का.आ. 2793.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधन के संवद्ध विद्योक्तों और उनके कर्मचारियों के बीच अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय कोलकाता के पंचाट (संदर्भ संख्या 33/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 8-9-2008 को प्राप्त हुआ था।

[सं. एल-12011/78/2004-आईआर(बी-1)]

राजिन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 8th September, 2008

S.O. 2793.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 33/2004) of the Central Government Industrial Tribunal-cum-Labour Court Kolkata as shown in the Annexure, in the Industrial Dispute between the management of Punjab National Bank and their workmen, received by the Central Government on 8-9-2008.

[No. L-12011/78/2004-IR (B-1)]

RAJINDER KUMAR, Desk Officer

AND

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL
AT KOLKATA

Reference No. 33 of 2004

Parties: Employers in relation to the management of Punjab National Bank

AND

Their workman

Present: Mr. Justice C.P. Mishra, Presiding Officer

APPEARANCE

On behalf of the : Mr. S. Chatterjee, Manager, H.R.D.
Management

On behalf of the State of West Bengal, Vice President of the
West Bengal Sahitya Akademi.

State: West Bengal. Industry: Banking.
Dated: 23/08 August, 2008.

AWARD

By Order No. 1-12011-78.2004-IR(B-II) dated 18-08-2004 the Government of India, Ministry of Labour in exercise of its power conferred on IO(1)(d) and (2A) referred the following dispute to the Tribunal for adjudication:

1. On behalf of the management of Punjab National Bank, the following question is put for adjudication: Is the services of Shri Sunil Kumar regularized? If not, what relief the management is entitled to?

2. The following facts have been made at the instance of Punjab National Bank Employees' Union, hereinafter to be referred as the union. The case of the union as it appears from its statement of claims, in brief is that Shri Sunil Kumar (hereinafter referred to as the workman) was first engaged in the year 1977 at the erstwhile New Bank of India branch at 18A, Brabourne Road, Kolkata with Punjab National Bank since 01-06-1993. Since then his services were utilized as full time Peon in the same job of the Bank in addition to his duties to run the canteen, fix other permanent sub-staff and for doing odd jobs in the branch. But he was only paid daily wages and was not paid an expenditure instead of paying regular salary to him. As per records his services were utilized throughout the day as a permanent member in Peon cadre, who for access to Bank's strong room and vault for carrying cash boxes. Further, since the date of merger of erstwhile New Bank of India with the Bank sometime in June 1993, he was also operating the same in addition to all other routine jobs. After merger of the erstwhile New Bank of India, hereinafter to be referred as the erstwhile Bank, with Punjab National Bank, hereinafter to be referred as the present Bank, the concerned workman continued to render the same types of job in the Bank with identical mode of payment as in some case with enhanced rates, but he was never regularized in the services of the Bank. In June, 2001 he made written submission to the Regional/Zonal authorities to make him permanent in the services of the present Bank, but nothing positive had happened and he approached the union to take up the issue officially with the management. The union accordingly took up the matter with the management and the management agreed to examine it with all seriousness, but the management suddenly took a decision to close down the branch for the reasons best known to it. The union thereafter raised an industrial dispute before the Regional Labour Commissioner (Central), Kolkata on 02-07-2002 and the conciliation proceedings were held which ended in failure. It is pointed out that from the various correspondences made by the authorities in this regard the details of service of the concerned workman can be

ascertained. It is stated that in an almost identical case, the union got an Award in favour of a workman namely, Sk. Nizam Ali who was operating Bank's generator alongwith other ancillary jobs of Bank's Branch at 18A, Brabourne Road, Kolkata for years together vide notification dated 04-05-2001 and the workman was absorbed in the services of the Bank with past benefits. It is accordingly prayed that a direction be given to the Bank to absorb Shri Sunil Sana as a permanent full time employee in Peon's cadre with retrospective effect including appropriate special allowance and other benefits.

3. The present Bank in its written statement has raised certain preliminary objections. It is stated that the concerned workman has not been an employee of the Bank and so there has been no employer-employee relationship between the Bank and him and as such the present dispute referred to for adjudication before this Tribunal cannot be termed as an industrial dispute as defined under the provisions of Industrial Dispute Act, 1947. It is also stated that the present dispute has not been properly and validly espoused as the concerned workman is not a member of the union and thus the union has no locus standi to raise the present dispute. It is further stated that the dispute was raised after the lapse of more than half a decade and even the claim for regularization of the concerned workman was not raised at the time of merger of erstwhile Bank with the Bank when the matter of regularization of services of all the employees of erstwhile Bank were considered. Regarding merits, the case of the Bank, in brief is that the concerned workman was never engaged by the management of erstwhile Bank. He was engaged for running the canteen in the branch premises. It is however, admitted that he was entrusted with the job of running the Bank's generator at the time of power-cuts/load-shedding against payments on a verbal contract with the Bank besides fetching water for which he was adequately compensated by payment of Rs. 10 per day. According to the Bank there was no question of regularization of the concerned workman in its service as he was never in employment of the Bank in any capacity. In reply to the contention of the union it is stated that the decision to close down the branch was a matter of policy of the Bank since it was running in law and had nothing to do with the alleged claim for regularization of the workman concerned. Bank has denied all other contentions of the union.

4. A rejoinder is also filed by the union denying the contentions of the written statement of the Bank and reiterating its case as made in its statement of claims.

5. Both the parties have produced oral and documentary evidence in this case. Seven witnesses have been examined on behalf of the workman in this case. WW-1 Kamal Lihiri joined erstwhile Bank in the year 1977 and from 1983 to 1991 he was at Muza Galib Street Branch of the said Bank. He has stated in his evidence that he

knows the concerned workman whose main job to look after the canteen of the Bank. He used to look after the job of Peon in absence of other Peon. In the absence of the Generator Operator, he also used to look after the functioning of Generator Operator. So far as the knowledge of the witness goes there was no permanent Generator Operator. According to him the workman used to start work from before 10 A.M. and he has seen him working in the Bank even after 5 P.M. He has also stated that the workman was not in the pay roll, but he used to get sundry payments through vouchers. He used to get monthly payments for working in the canteen and for other sundry works he used to get payment through voucher. He has further stated that the workman used to bring cash boxes from vault and carried back the same in the absence of Cash Peon and he was regularly operating generator in the Bank. In cross-examination, however, the witness could not say whether the generator functioning in the Bank was owned by the Bank, nor could he say whether the workman claimed for his regularization in the Bank. He also does not exactly know how the concerned workman used to be remunerated.

WW-2, Suraj Roy also worked at Mirza Galib Street Branch from June, 1996 to 2001 and he know that it was branch of the erstwhile Bank. He also knew that the concerned workman was working in the Bank. He has stated that the concerned workman used to do almost all the work of the Bank, namely, opening and closing the shutter of the Bank, doing the work of Cash Peon and Clearing and also looking after the generator and canteen. He has also stated that he was paid through vouchers and at times even the Manager used to pay him out of his pocket. According to him the same procedure relating to payment in the erstwhile Bank was following in the Bank. The witness has further stated that he had lodged protest when he came to know that the concerned workman was not a permanent Peon of the Bank. In cross-examination the witness has stated that the concerned workman made representation to the Bank for regularization of his services. It is also stated by him that during the period 1996 to 2001 there were four Peons in the Bank, viz. one Cash Peon, one Armed Guard, one Daftary and one Peon, though the Armed Guard and Daftary were not working regularly. The witness, however, has stated that the concerned workman used to be paid for working in the canteen through canteen committee as per procedure of the Bank. He was paid through cash voucher for working as generator operator. According to the witness the system of running the generator was in force since before he joined the branch of the Bank.

WW-3, Ranjit Maity is a Peon of the Bank who joined the Mirza Galib Street Branch of the Bank in the year 1985 and transferred there from in February, 2000. He knew Shri Sunil Sana the concerned workman. He has stated that the concerned workman used to do all the work of sub-staff and operate the generator of the Bank. He also used to

work in the Cash Dept. in the absence of the sub-staff. He also used to bring water from outside and serve the same amongst the staff members. But according to him the concerned workman was not a permanent employee of the Bank. In cross-examination the witness has reiterated that the concerned workman used to operate generator of the Bank from 1985 to 2000 and there used to be frequent load-shedding during that period. He was also running the canteen of the Bank and was serving tea, snacks etc. amongst the members of the staff throughout the day. He has also stated that they requested the members of the staff and the union leaders for regularization of the services of the concerned workman and the Bank Manager was also approached several times for the same. It is also stated by him that he had been insisting on that even during the time of erstwhile Bank. But, they did not give anything in writing. The witness has further stated that the concerned workman was compelled to work because of shortage of staff in the branch.

Other witnesses examined on behalf of the workman viz. WW-4, Amitava Saha, WW-5, Bijoy Singh, WW-6, Kanai Lal Singha and WW-7, Somdeb Goswami are all employees of the Bank and they have deposed in the same line like the earlier witnesses referred to above.

6. On the other hand, three witnesses have been examined on behalf of the Bank. MW-1, Rupak Ghosh had worked at Mirza Galib Street Branch of the Bank from February, 1996 to July, 1997 and he knows the concerned workman. He has stated in his evidence that the concerned workman was primarily a canteen contractor and he was also the Generator Operator of the Bank and he used to come regularly to the office. He used to take files to different tables in the absence of regular Peon and also used to serve water at the time of taking lunch. He has also stated that there was a canteen committee which used to make payment to the canteen contractor. He has also stated that the generator which used to be operated by the concerned workman at the time of requirement belonged to the Bank and payment for the same used to be made on monthly basis and there used to be frequent load-shedding in the Bank in the year 1996-97. The witness has further stated that he was neither the competent authority to give employment to the concerned workman in the Bank, nor he was the joint custodian of the Bank's cash. According to him as per sanctioned staff strength of the Bank the sub-staff were working there. In cross-examination the witness has stated that the services of the concerned workman used to be utilized in the Bank in the absence of the permanent Peon and such services were taken from him because of his long relation with the Branch. He has also stated that the generator was purchased by the erstwhile Bank and the system of operating the generator by the concerned workman was continued, but no reference had been made to the higher authority for the same. He has also stated that for opening the Bank the services of the

concerned workman were taken for some days. The witness has not been able to say as to whether the working strength of the sub-staff were adequate or not, nor he could say about the exact rules of the canteen committee. It is, however, stated by him that canteen subsidies are given by the Bank every month and canteen used to be operated within its resources and he had signed vouchers for payment of canteen subsidy. This witness has further stated that the concerned workman used to come to the Branch before commencement of the banking hour and he used to remain in the Bank till the end of the banking business hour, i.e., 10 A.M. to 5 P.M. He, however, could not recollect whether he had ever asked the concerned workman to stay beyond 5 P.M. and they themselves used to close the Bank. He has also stated that one Jagannath Basu was the Armed Guard posted in the Bank who used to remain on leave frequently due to illness and during the absence of the said Armed Guard officiating arrangements had been made amongst the permanent sub-staff of the Bank.

MW-2, Ajoy Kumar Mukherjee worked at Mirza Galib Street Branch of the Bank from July, 1997 to February, 2000 and he knew Shri Sunil Sana the concerned workman. He has stated in his evidence that the concerned workman was a canteen contractor and Generator Operator of the Bank and he was regular. He has never seen the workman working in the Cash Dept. of the Bank. He has also stated that during his tenure he himself used to open the Bank and in his absence his second man used to do the same. He has also stated that they had a canteen committee and the Bank was paying to the said committee and the said committee used to make payment to the concerned workman. However, for operating Generator they used to make payment to him. The witness has further stated that he never used the service of the workman as a Peon and did not serve water to the staff members of the Bank. He has also stated that he was never approached by the workman for making him regular and he was not competent to do so. He also stated that there was frequent load-shedding in the branch during his tenure. In cross-examination the witness has stated that when he joined the Branch he saw the workman working as canteen contractor and generator operator, but he could not say since when he was working or who appointed him in the Bank. He has denied that the workman used to work in the Bank like other permanent staff or he used to work in the Cash Dept. and carrying cash from the strong room to the Dept. and vice versa. It is stated by him that normally no outsider is sent to the Regional Office, but sometime for carrying statistical information and some urgent letters the workman used to be sent there. He has further stated that during his tenure he has never seen the workman to have opened the door in the morning or have closed the door in the evening and the same used to be done by the Watch & Ward staff. On being shown the document dated 2nd July, 1988, Ext. W-1 the witness has admitted his signature there and has

stated that during rainy season there was water logging and when water pump remained out of order, he requested the workman concerned to carry water from outside. According to him the Peon used to serve drinking water to the members of the staff of the Bank and customers. It is further stated by him that during load-shedding the concerned workman used to operate Bank's generator and he was doing so between 10 A.M. to 5 P.M. for which he was not paid regular salary.

MW-3, Rama Kanta Nayak was posted at Mirza Galib Road Branch from February, 2000 to May, 2002 and he knew the concerned workman. He has stated that the concerned workman was a Generator Operator and was also working as a canteen boy and was also supplying water to the staff, but he had not seen him working in the Cash Dept. of the Bank. He used to be paid through canteen committee and the payment for generator maintenance used to be made through Bank's revenue. The concerned workman never approached the witness for regularization of his service and it was beyond his power. According to the witness there used to be frequent loading-shedding in the branch during his tenure. In cross-examination the witness admitted that the concerned workman was supplying drinking water to the staff members and he was also bringing fuel from the petrol pump for running the generator and sometimes during exigencies he used to be sent to the Regional Office with Daks. On being confronted with some papers the witness has stated that during his tenure all these representations were sent to the Manager and only a copy was given to him. He, however, has admitted that the letter dated 11-02-2002, Ext. W-2 was given to him and the same bears his signature. On being confronted with the letter dated 17-06-2002, Ext. W-3 the witness has admitted his signature on it and also admitted that it shows he was posted there even in June, 2002. He has further admitted that there is a policy that a committee is to be formed every year to finalize contractor, but as per his recollection he had not formed any such committee.

7. Certain documents have been exhibited on behalf of the workman, but the management has preferred not to exhibit any document on its behalf. Ext. W-1 is the voucher dated 02-07-1998 of the Bank, Ext. W-2 is the letter dated 11-02-2002 of the concerned workman to the Manager of the Bank, Ext. W-3 is the letter dated 17-06-2002 to the Senior Manager of the Bank by another Senior Manager. Ext. W-4 is a voucher dated 11-08-90 of the erstwhile Bank. Ext. W-5 are various vouchers of the erstwhile Bank and the Bank showing payments to the concerned workman. Exts. W-6 to W-8 are the representations of the concerned workman on different dates. Ext. W-9 is a letter dated 17-11-2000 of the Personnel Dept. to the Sr. Manager, M.G. Street Branch of the Bank. Ext. W-10 is a letter dated 13-12-2001 written by the union to the Senior Regional Manager, Kolkata of the Bank. Ext. W-11 is a letter dated 02-05-2002 written by the union to the Assistant Labour Commissioner

(C), Kolkata. Ext. W-12 is a letter dated 13-09-2002 of the Senior Manager to the Chief Manager, HRD Dept., Kolkata of the Bank. Ext. W-13 is a letter dated 06-11-2002 of the Bank to the Assistant Labour Commissioner (C), Kolkata. Ext. W-14 is a letter of the union dated 9-12-2002 to the ALC(C), Kolkata. Ext. W-15 is another letter of the union dated 12-12-2002 to the Deputy General Manager of the Bank. Ext. W-16 is a letter dated 19-02-2003 of the ALC(C), Kolkata to the Chief Manager of the Bank. Ext. W-17 is a letter dated 12-03-2003 of the Bank to the union. Ext. W-18 is a letter of the union dated 08-04-2003 to the ALC (C), Kolkata. Ext. W-19 is the minutes of the conciliation proceedings dated 22-04-2003 and Ext. W-20 is the letter dated 21-04-2004 written by the ALC(C), to the Secretary, Govt. of India, Ministry of Labour regarding failure of conciliation.

8. On the perusal of the aforesaid facts as submitted on behalf of either parties in their pleadings and the evidence led by them in this connection it is evident that the claim of the workman concerned as per schedule of reference is there for challenging the action of the management in his services and to get a relief to which he would be entitled to get for the same, if termination of his services is held to be illegal and unjustified by the Tribunal. On the perusal of the statement of claims filed by the workman in this connection, however, it appears so that there has been no such fact so stated by him regarding that aspect of the matter about alleged termination of his service by giving its required details and particulars indicating thereby the particular date when his services had been really so terminated by the management in this regard so that the claim of the workman could be so adjudicated for the same as per his claim vide the schedule of reference in this regard. According to the facts so stated by him he had been first engaged in the canteen in the year 1986 in the erstwhile Bank which was merged with the present Bank on 02-09-1993. According to him further his services were always so utilized by the Bank as full-time Peon in the routine job in addition to his duties to run the canteen like other permanent sub-staff and for doing so he was paid the daily wages instead of a regular salary that was so admissible to a regular Peon working in the Bank. Besides that he also operated the generator and also did other duties from time to time in the erstwhile Bank and in the present Bank as well thereafter, but the management suddenly took a decision to close down the branch for the reasons best known to it, it has also been stated that in almost an identical case one other workman, Sk. Nizam Ali was absorbed in the services of the Bank with past benefit and as such the main relief claimed on behalf of the workman is in fact now for regularization of his services in the Bank as full-time employee with retrospective effect

including other benefits as admissible towards it for the same. Management, however, has challenged it to be so and denied the claim of the workman in this regard by submitting that there has been never an employer-employee relationship between the Bank and the workman concerned and also that this dispute has been now raised after more than half a decade and that no such claim was ever preferred for regularization of his services even at the time of merger of the erstwhile Bank with the present Bank when the regularization of services of all other employees of erstwhile Bank was so raised and considered by the present Bank in this regard. So far as the merit of the claim of the workman as it has been so pressed on his behalf, it has been stated that no doubt he was entrusted with the job of running the Bank's generator, bringing water etc. from time to time as and when it was so required but for that he was fully compensated by payment of his wages @ Rs. 10 per day to him for the same. Management in this connection got examined three witnesses viz. MW-1 Rupak Ghosh, MW-2 Ajoy Kumar Mukherjee and MW-3 Rama Kanta Nayak who had been so posted in the concerned branch for different periods to state the facts about the concerned workman to be engaged by the Bank through a canteen contractor and as such he used to do some work in the Bank as well in the absence of regular employees to serve water etc. from time to time. There was no question as such of giving any permanent job or appointment to him so that there could have been any such occasion for absorbing him in the services of the present Bank as its regular staff as it is so claimed for the same in this regard.

9. The workman, however in order to press his claim has relied upon the evidence of number of witnesses as examined at his instance to support him in this regard viz. WW-1 Kamal Lihiri, WW-2 Suraj Roy, WW-3 Ranjit Maity, WW-4 Amitava Saha, WW-5 Bijoy Singh, WW-6 Kanai Lal Singha and WW-7 Somdeb Goswami the employees of the Bank who all have stated about the facts that the concerned workman had done various job from time to time in the absence of other Peons and regular staff and also had looked after the function of the generator as well from 10 A.M. to 5 P.M. and that for this work he used to get sundry payments from time to time through vouchers vide Exts. W-1, W-4 and W-5 filed on the record. It is also stated by them that the workman also used to bring cash boxes etc. in the absence of Cash Peon. They, however did not tell about any such fact regarding his formal appointment made by the erstwhile Bank or in the present Bank as a regular staff who is said to have been so appointed by them after observing the required formalities as per its procedure for making appointment of regular staff in the Bank. The documents filed on behalf of the

workman i.e., vouchers, Exts. W-1, W-4 and W-5 relied upon by him only go to show that the workman had been paid the amount for various periods for the work done by him for supplying drinking water and other such petty work in the Bank. There is, however, no formal appointment letter as such given to him nor there was any such letter of termination of his services so made by the Bank so that the fact regarding the claim of the workman in this connection could be so considered and adjudicated in light of this aspect of the matter vide his claim made as mentioned in the schedule of reference for this in this connection. There is also no evidence adduced by the workman to show the relationship of employer-employee existing between the workman and the Bank as it so claimed by him between the Bank and himself to be existing as such like that of other regular staff so working in the Bank. Consequently, it can equally be said that there had been no such ground to consider his claim for regularization or his permanent absorption in the service of either in the erstwhile Bank or with the present Bank on 02-09-2003 after it was so merged. Various documents filed on behalf of the workman showing the payments made to him, i.e., Exts. W-1, W-4 and W-5 only go to show that the workman was engaged from time to time in the canteen for serving tea and doing other miscellaneous work in the absence of the regular sub-staff for which he was duly so paid the said amount as it was so agreed by him to take it for his services rendered to the Bank as a daily wage. This, however, by itself does not mean or confer any right upon him to be taken as regular sub-staff by the Bank for which there should have been a sanctioned post to be so lying with the Bank and also he must have been so selected by it by observing the due procedure applicable for selection of such sub-staff as per its regulations of the Bank in this regard. It is also an admitted fact that he was never selected as such so that his services could be so based on any such legal and valid grounds to call for his regularization or permanent absorption in the services of the Bank. It is for this reason that there could be no such formal order of termination of his services as well to be so passed either by the erstwhile Bank or the present Bank after its merger on 02-09-1993 in this case.

10. As regards the claim of the workman so raised which is based on the ground that some other person like him viz. Sk. Nizam Ali who was also so working as a Generator Operator in the Bank's Brabroune Road Branch, Kolkata and he was so absorbed unlike him, it is evident that no such document for this has been filed by the workman to show that the case of the workman concerned is quite similar like that of Sk. Nizam Ali in this regard. More so, it is the discretion of the management to give a chance to a person who might have so worked with them provided there has been a post so available to the Bank for

appointment to be made or even for regularizing services of the person concerned and in absence of any such fact being so available, no such benefit can be given to the workman himself on such vague ground for his absorption or even for his regularization in the services of the Bank as regular staff. Apart from that there is no such occasion now for his claim being considered at all by the Bank as on his own admission it is an admitted fact that the present Bank no longer operates any such branch at the said place which has now been closed down as a matter of policy as the branch itself was running at a loss and, therefore, on this ground too the question of his regularization in the services or his permanent absorption does not arise and he is not entitled to any such relief claimed by him in this connection.

11. Such type of engagement also does not confer any such legal right to a workman for his absorption or regularization since the legal position has now been well settled with the Constitutional Bench decision of the Hon'ble Apex Court in Secretary, State of Karnataka & Others v. Umadevi (3) and Others, (2006) 4 S.C.C. 1 wherein it has been clearly laid down that "When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in concerned cases, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot be held that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek positive relief or being made permanent in the post."

12. In view of the aforesaid discussion in the preceding paragraphs it is evident that there is no force in the claim and contention of the workman concerned to challenge the action of the management of Punjab National Bank either for alleged termination of his services or even for not absorbing him with the Bank as he has got no legal right to make any such claim in this regard. In view of the above the workman is not entitled to get any relief in this regard as so prayed by him.

C.P. MISHRA, Presiding Officer

Kolkata, Dated the
27th August, 2008

नई दिल्ली, 8 सितम्बर, 2008

का. आ. 2794.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्मॉल इण्डस्ट्रीज डेवलपमेंट बैंक ऑफ इण्डिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं.-1, चण्डीगढ़ के पंचाट (संदर्भ सं. 12/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 08-9-2008 प्राप्त हुआ था।

[सं. एल-12012/146/2005-आईआर(बी-II)]

राजिन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 8th September, 2008

S.O. 2794.—In pursuance of Section 17 of the Industrial Disputes Act, 1947(14 of 1947), the Central Government hereby publishes the award (Ref. No. 12/2006) of the Central Government Industrial Tribunal-cum-Labour Court, No.1, Chandigarh as shown in the Annexure, in the industrial dispute between the management of Small Industries Development Bank of India, and their workmen, received by the Central Government on 08-9-2008.

[No. L-12012/146/2005-IR(B-II)]

RAJINDER KUMAR, Desk Officer

ANNEXURE

BEFORE SHRI GYANENDRA KUMAR SHARMA,
PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-1,
CHANDIGARH

Case No I.D 12/2006

Shri Jaswinder Singh, S/o Shri Prem Chand R/o H. No. 2484,
Sector 25-D, Chandigarh.

...Applicant

Versus

The Deputy General Manager, Small industries
Development Bank of India, SCO Nos.145-146, Sector-17-
C, Chandigarh.

...Respondent

APPEARANCES

For the workman: Sh. R.K. Gautam, Advocate

For the management: Sh. A.K. Bakshi, Advocate

AWARD

Passed on 22-8-08

The Central Government vide notification No. L-12012/146/2005/IR(B-II) dated 28-4-2006, has referred the following dispute to this Tribunal for adjudication:—

“Whether any employer-employee relationship exists between the management of small industries Development Bank of India, and Shri Jaswinder Singh? If yes, whether the action of the management

of Small Industries Development Bank of India, Chandigarh in terminating the services of Shri Jaswinder Singh, w.e.f. 06-04-2005 without complying with the provisions of Sections 25-F, G, H of the I.D. Act, 1947 is just and legal? If not, to what relief the workman is entitled to?”

2. The present reference was made by the Central Govt. on the failure of conciliation proceedings for adjudication of the matter referred in the schedule referred above and the workman prayed for declaring the action of the management as illegal and invalid and for reinstatement in service with full back wages and all consequential benefits in the interest of justice, equity and fair play.

The management turned up and opposes this application.

As per office memorandum dated 30-4-08 this case was fixed in pre Lok Adalat meeting on 22-8-08 for its disposal by adopting the mediation and conciliation mechanism. With the efforts of the Tribunal, the workman agreed to withdraw his reference. Both the workman and the management made a statement that management agreed to give priority of the contract to be considered on 1-4-09 to the workman/contractor Jaswinder Singh and both the parties agreed to this settlement. It is propose to dispose of this reference in Lok Adalat. Accordingly the reference is returned to the Central Govt. as settled in Lok Adalat. Central Govt. be informed. File be consigned to record.

Chandigarh

G.K. SHARMA, Presiding

Officer

22-8-08

नई दिल्ली, 8 सितम्बर, 2008

का. आ. 2795.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार न्यू इण्डिया एशोरेन्स कम्पनी लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं.-1, चण्डीगढ़ के पंचाट (संदर्भ सं. 99/91) को प्रकाशित करती है, जो केन्द्रीय सरकार को 08-9-2008 को प्राप्त हुआ था।

[सं. एल-17012/5/91-आईआर(बी-II)]

राजिन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 8th September, 2008

S.O. 2795.—In pursuance of Section 17 of the Industrial Disputes Act, 1947(14 of 1947), the Central Government hereby publishes the award (Ref. No. 99/91) of the Central Government Industrial Tribunal-cum-Labour Court No.1, Chandigarh as shown in the Annexure, in the industrial dispute between the employers in relation to the management of New India Assurance Company Ltd., and their workmen, which was received by the Central Government on 8-9-2008.

[No. L-17012/5/91-IR(B-II)]

RAJINDER KUMAR, Desk Officer

ANNEXURE

**BEFORE SHRI GYANENDRA KUMAR SHARMA,
PRESIDING OFFICER, CENTRAL GOVT.
INDUSTRIAL TRIBUNAL-CUM-LABOUR
COURT-1, CHANDIGARH**

Case No. I.D. 99/91

Smt. Subhadra Kumari C/o Sh. Rakesh Chopra, Chairman,
General Insurance Employees Association, New India
Assurance Company Ltd. Sector-17-A, Chandigarh

... Applicant

Versus

The Regional Manager, New India Assurance Company
Ltd. Sector 17-A, Chandigarh

... Respondent

APPEARANCES

For the workman: Sri M.L. Bassor

For the management: Sh. N.K. Zakhami

AWARD

Passed on 2-9-08

Central Govt. vide Notification No. L-17012/5/91/
IR(B-II) dated 26-7-91, has referred the following
dispute to this Tribunal for judicial adjudication:—

“Whether the action of the management of New India Assurance Company Ltd. in terminating the services of Smt. Subhadra Kumari Assistant-cum-Typist is justified? If not, to what relief is the workman entitled?”

It is the contention of Smt. Subhadra Kumari that she was appointed by the opposite party New India Assurance Company Ltd. as Assistant-cum-Typist on daily wage basis on 15-5-84. Without any fault of Smt. Subhadra Kumari, the management of respondent terminated her services on 30-6-95. No notice or retrenchment compensation was given before termination of her services which is in violation of provisions of Industrial Disputes Act. She has worked 240 days continuously before the termination of her services. After her termination, more than 100 employees have been employed by the company, but she was not given any chance to serve.

The respondent denied the claim of workman stating that she was not the employee of the management of the respondent. She was never appointed on the post of typist/assistant nor as a daily wage. Due to the load of work of the company and to clear the backlog of work, quotations for typing work were called from the local market. The petitioner also submitted her quotation for the typing work which was found lowest amongst the other quotations. According, the petitioner was entrusted the work of typing as per terms and conditions offered by her in her quotations which was accepted by the management. The payment was also made on the basis of quotations submitted by her. This contractual work was given to her from time to

time but for specific period. On the basis of the above contentions, the management has declined any relationship of employer and employee between the management of respondent and workman.

Both of the parties were afforded the opportunity for adducing evidence. Apart from the oral evidence, documentary evidence was also filed by both of the parties.

Ex. M.1, is the photocopy of the letter said to be written by Smt. Subhadra Kumari to the Branch Manager, New India Assurance Company, Fazilka regarding the typing of documents mentioning inter alia the rate of typing the policies and letters as 60 paise per statement. Ex. M.2 is another letter dated 1-3-85, said to be written by Miss. Subhadra to the Manager, New India Assurance Company Ltd. regarding typing of documents, quoting the rate of typing policy documents, letters and statement etc. at the rate of 50 paise per letter. Ex. M.3 is also the same letter written by Smt. Subhadra Kumari to the Branch Manager regarding the rate of typing public documents etc. at the rate of 60 paise per letter. In all the three letters, quotations, it is also mentioned that the typing machine paper and the carbon paper were to be provided by the management of the respondent company. Ex. M.4 to M.53 are the photocopy of the vouchers through which the payment to the workmen was made good. Ex. M.55, M.56 are the letters of the quotations given by the Vijay Type College for typing of the insurance policies, documents and the statement of the company at the rate of 65 per paise per document. Ex. M.57, M.58 are the letters/quotations by Olympia Commercial College, regarding typing of insurance document. Ex. M.62—M.68 are the photocopies of the vouchers through which the payment was made good to the workman.

Through letter paper no. 121, the workmen also filed, at the stage of arguments, two documents letter no. 123 is the letter of Deputy Manager written to Vice President, Northern Zone C.G.I.A. regarding Smt. Subhadra Kumari. Letter no. 124 is the letter written by Deputy Manager, New India Assurance Company Ltd. to H.L. Kooker, Additional Manager, Firozpur regarding Miss. Subhadra Kumari mentioning her as daily waged typist. I have heard learned counsel for the parties and pursued the entire materials on record.

The main question before this Tribunal for judicial adjudication is whether there is a relationship of employer and employee between the management of respondent and the workman? If it is, whether the workman has completed 240 days continuously in the preceding year from the date of his termination from the services?

The documentary evidences makes it clear that the management of the respondent company invites tender for their work of typing the insurance policies, other documents and statement of the company. The workman Smt. Subhadra Kumari along with two others, filed the quotations

mentioning their rates for typing the policies etc. The copies of the quotations filed by all three are on record. Apparently, the quotation/proposal of Miss. Subhadra Kumari was accepted being lowest. The endorsement regarding acceptance the offer of Smt. Subhadra Kumari was endorsed on her quotation itself. From the perusal of the copies of vouchers, it is also clear that vouchers were prepared for payment of different amount, but the purpose for which the payment was made good, is clearly mentioned. In every voucher, the purpose of payment is written as typing of insurance policy, documents of the insurance company and the statements etc. The purpose of payment has the nexus with the quotations/proposal made by the Smt. Subhadra Kumari. In her cross examination she has admitted her signatures on quotations and on vouchers but has stated that these are the quotations for the overtime work she did with the company. In the statement of the claim, it is not the case of Smt. Subhadra Kumari that she also worked as overtime along with her daily waged working. Thus, from the perusal of the evidence, oral and documentary, it is clear that Smt. Subhadra Kumari offered her services for typing the insurance policies, some documents and statements at specific rates which were lowest amongst all quotations. Her quotation was accepted and typing work of policies, documents, and statement was given to her by the management of the respondent company. The payment was also made of the same work and in the copies of the vouchers it is specifically mentioned that payment is made by company for typing of policies etc.

Smt. Subhadra has failed to show before this Tribunal that along with the daily waged worker, she was also working an overtime. In fact, there is no evidence on record to show that Smt. Subhadra was working as a daily waged worker, except one document which is the letter written by the Deputy Manager of the company to the Additional Manager Ferozpur, in which she has been mentioned as daily waged typist. She has to prove by some cogent evidence that she worked for 240 days as a daily waged worker and she was paid for that. There is no iota of evidence on record that she worked as a daily waged worker except the above mentioned letter. This letter is not sufficient to prove that she was working as daily waged worker with the company. It only contains a statement referring her a daily waged worker which is not sufficient to prove the direct employer-employee relationship between the management and the workman. On the other hand, it is prove before this Tribunal that she worked on the basis of the contract entered in between the insurance company for typing of insurance policies, other documents and statements of the company on a specified rates. The documentary evidence clearly proved it that she was not a daily waged worker but she worked for the company on the basis of the said contract. Accordingly, no relationship between the workman and the management of respondent as employer and employees existed at the time she worked

for the company. As she has not worked as a daily waged worker, there was no question for her termination from the service. Her work automatically ceased on expiration of the period of contract. This reference is answered accordingly. Let the Central Government be informed. File be consigned.

G. K. SHARMA, Presiding Officer

नई दिल्ली, 9 सितम्बर, 2008

कार. आ. 2796.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसारण में केन्द्रीय सरकार डाक विभाग के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, चण्डीगढ़ के पंचाट (संदर्भ सं. 22/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 9-9-2008 को प्राप्त हुआ था।

[सं. एल-40012/77/2005-आईआर (डीयू)]

अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 9th September, 2008

S.O. 2796.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 22/2006) of the Central Government Industrial Tribunal-cum-Labour Court, No. 1, Chandigarh as shown in the Annexure, in the Industrial dispute between the employers in relation to the management of Department of Posts, and their workmen, which was received by the Central Government on 9-9-2008.

[No. L-40012/77/2005-IR(DU)]

AJAY KUMAR GAUR, Desk Officer

ANNEXURE

BEFORE SHRI GYANENDRA KUMAR SHARMA,
PRESIDING OFFICER, CENTRAL GOVT.
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-1,
CHANDIGARH

Case No. I.D. 22/2006

Smt. Darshana Devi W/o Shri Manoj Lal, C/o Shri S.D. Marwah Durga Mandir, 79, Street No. 4, Old Bisan Nagar, Patiala.

... Applicant

Versus

The Chief Post Master General, Dept. of Posts, Punjab Circle, Sector-17, Chandigarh.

... Respondent

APPEARANCES

For the workman: None

For the management: Sh. Namit Kumar

AWARD

Passed on 26-8-08

The Central Government vide notification No. L-40012/77/2005/IR(DU) dated 19-5-2006, has referred the following dispute to this Tribunal for adjudication:—

"Whether the action of the management of Postal Department., Patiala in terminating the services of Smt. Darshana Devi W/o Shri Manohar Lal, Ex-sweepress w.e.f. 30-11-1998 without complying with the statutory provisions of ID Act, 1947 is legal and justified? If not, to what relief the concerned workman is entitled to and from which date?"

2. No one is present, on behalf of workman. Learned representative of the management is also present. Since morning this reference has been called number of times. At 10.45 am. It was ordered to be placed before this Tribunal once again at 2 p.m. It is 2.30 now and on repeated calls no one is present, in spite of having of full knowledge of the proceedings of this reference. The reference is as old as referred to this Tribunal in the year 2006. On repeated calls since morning no one is present. Accordingly, the reference is dismissed in default for non-prosecution. Central Government be informed accordingly. File to be consigned.

Chandigarh G.K. SHARMA, Presiding Officer
26-8-08

नई दिल्ली, 9 सितम्बर, 2008

का. आ. 2797.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार दूर संचार विभाग के प्रबंधन के संयुक्त नियोजकों और उनके कर्मचारों के बीच अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं.-1, चण्डीगढ़ के पंचाट (संदर्भ सं. 289/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 09-9-2008 प्राप्त हुआ था।

[सं. एल-40012/182/2001-आईआर (डीयू)]

अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 9th September, 2008

S.O. 2797.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref No. 289/2001) of the Central Government Industrial Tribunal-cum-Labour Court, No.1 Chandigarh as shown in the Annexure, in the Industrial dispute between the employers in relation to the management of Department of Telecom, and their workmen, which was received by the Central Government on 9-9-2008.

[No. L-40012/182/2001-IR(DU)]

AJAY KUMAR GAUR, Desk Officer

ANNEXURE

BEFORE SHRI GYANENDRA KUMAR SHARMA,
PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-1,
CHANDIGARH

Case No. I. D. 289/2001

Smt. Darshana Devi D/o Shri Lachman Dass, House No. 39/
4, Smalkha, Panipat

Applicant

Versus

The General Manager, Telephone, Karnal, Haryana.

.....Respondent

APPEARANCES

For the workman : Workman in person

For the management : Sh. G. C. Babbar

AWARD

passed on 22-8-08

The Central Government vide notification No. L-40012/182/2001/IR(DU) dated 7-9-2001, has referred the following dispute to this Tribunal for adjudication:

"Whether the action of the management of Department of Telecommunication in terminating the services of Smt. Darshana w.e.f. 8-4-99 is just and legal? If not, to what relief the workman is entitled to?"

2. The present reference was made by the Central Govt. on the failure of conciliation proceedings for adjudication of the matter referred in the schedule referred above and the workman prayed for declaring the action of the management as illegal and invalid and for reinstatement in service with full backwages and all consequential benefits in the interest of justice, equity and fair play

The management turned up and opposes this application.

As per office memorandum dated 30-4-08, this case was fixed in pre lok adalat meeting on 22-8-08 for its disposal by adopting the mediation and conciliation mechanism. With the efforts of the Tribunal, the workman agreed to withdraw his reference. The representative of the management Shri H.K. Aggarwal AGM Legal made a statement that the department is ready to provide the work to the workman through contractor as per policy of the Government Management will ensure to provide the work to the workman. The workman also made a statement that as the management is providing the workman through contractor she withdraws her reference. Accordingly the reference is returned to the Central Government as settled in Lok Adalat. Central Government, be informed. File be consigned to record.

Chandigarh G.K. SHARMA, Presiding Officer
22-8-08

नई दिल्ली, 10 सितम्बर, 2008

का. आ. 2798.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार में फॉर्ब्स गोकक लिमिटेड के प्रबंधन के संयुक्त नियोजकों और उनके कर्मचारों के बीच अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय इन्सुलुम के पंचाट (संदर्भ सं. आईडी 314/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10-9-2008 प्राप्त हुआ था।

[सं. एल 29012/50, 1999-आईआर (एन)]

कमल चखर, डेस्क अधिकारी

New Delhi, the 10th September, 2008

S. O. 2798.—In pursuance of Section 17 of the Industrial Disputes Act, 1947(14 of 1947), the Central Government hereby publishes the award (Ref. I. D. No. 314/2006) of the Central Government Industrial Tribunal-cum-Labour Court Ernakulam now as shown in the Annexure, in the Industrial dispute between the employers in relation to the management of M/s. Forbes Gokak Ltd. and their workman, which was received by the Central Government on 10-9-2008.

[No. L-29012/50/1999-IR(M)]
KAMAL BAKHRU, Desk Officer
ANNEXURE

**IN THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM**

**Present: Shri P. L. Norbert, B.A., L.L.B., Presiding
Officer**

(Friday the 29th day of August, 2008/7th Bhadrapadh 1930)

I.D. 314 of 2006

I.D. 18/2000 of Labour Court, Ernakulam

Workman: Sri C.K. Vinu,
Cheruviliparambil House,
H.No. 14/331, Cochin-5.

By Adv. Sri C. Anilkumar

Management: The General Manager,
M/s. Forbes Gokak Ltd.,
Forbes Division Shipping,
Patvolk Building, Indira Gandhi Road,
Cochin-682003.

By Adv. Sri V. J. Mathew.

This case coming up in Adalath on 29-08-2008, this Tribunal-cum-Labour Court on the same day passed the following:

AWARD

This is a reference made under Section 10(1)(d) of Industrial Disputes Act.

2. When the matter came up for hearing the parties expressed their willingness for a settlement. Hence the reference was taken up in Adalath and discussed among the parties. They came to a settlement and a separate agreement was signed by the parties.

In the result, an award is passed in terms of the settlement which will form part of the award.

The award will come into force one month after its publication in the official gazette.

Dictated to the Personal Assistant, transcribed and typed by her, corrected and passed by me on this the 29th day of August, 2008.

P. L. NORBERT, Presiding Officer

Appendix—Nil.

नई दिल्ली, 10 सितम्बर, 2008

क्र. आ. 2799.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मै. फॉर्ब्स गोकक लिमिटेड के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय इर्नाकुलम के पंचाट (संदर्भ सं. आई. डी. 312/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10-9-2008 को प्राप्त हुआ था।

[सं. एल-29012/51/1999-आईआर (एम)]
कमल बाखरू, डेस्क अधिकारी

New Delhi, the 10th September, 2008

S. O. 2799.—In pursuance of Section 17 of the Industrial Disputes Act, 1947(14 of 1947), the Central Government hereby publishes the award (Ref. No. I. D. 312/2006) of the Central Government Industrial Tribunal-cum-Labour Court Ernakulam now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of M/s. Forbes Gokak Ltd. and their workman, which was received by the Central Government on 10-9-2008.

[No. L-29012/51/1999-IR(M)]
KAMAL BAKHRU, Desk Officer
ANNEXURE

**IN THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM**

**Present: Shri P. L. Norbert, B.A., L.L.B., Presiding
Officer**

(Friday the 29th day of August, 2008/7th Bhadrapadh 1930)

I.D. 312 of 2006

I.D. 16/2000 of Labour Court, Ernakulam

Workman: Sri M. Sajeesh, Malayil House,
Vallachira P.O., Trichy-680562.
By Adv. Sri C. Anilkumar

Management: The General Manager,
M/s. Forbes Gokak Ltd.,
Forbes Division Shipping,
Patvolk Building, Indira Gandhi Road,
Cochin-682003.

By Adv. Sri V. J. Mathew.

This case coming up in Adalath on 29-08-2008, this Tribunal-cum-Labour Court on the same day passed the following:

AWARD

This is a reference made under Section 10(1)(d) of Industrial Disputes Act.

2. When the matter came up for hearing the parties expressed their willingness for a settlement. Hence the reference was taken up in Adalath and discussed among

the parties. They came to a settlement and a separate agreement was signed by the parties.

In the result, an award is passed in terms of the settlement which will form part of the award.

The award will come into force one month after its publication in the Official Gazette.

Dictated to the Personal Assistant, transcribed and typed by her, corrected and passed by me on this the 29th day of August, 2008.

P. L. NORBERT, Presiding Officer

Appendix—Nil.

नई दिल्ली, 10 सितम्बर, 2008

का. आ. 2800.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मै. फोर्ब्स गोकक लिमिटेड के प्रबंधकों के संबद्ध नियोज्जकों और उनके कर्मचारों के बीच अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, इर्नाकुलम के पंचाट (संदर्भ सं. आई.डी. 13/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10-9-2008 को प्राप्त हुआ था।

[सं. एल-29012/52/1999-आईआर (एम)]

कमल बाखरु, डेस्क अधिकारी

New Delhi, the 10th September, 2008

S. O. 2800. In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. I.D. 13/2008) of the Central Government Industrial Tribunal-cum-Labour Court, Ernakulam now as shown in the Annexure, in the Industrial dispute between the employers in relation to the management of M/s. Forbes Gokak Ltd. and their workman, which was received by the Central Government on 10-9-2008.

[No. L-29012/52/1999-IR(M)]

KAMAL BAKHRU, Desk Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM

Present: Shri. P. L. Norbert, B.A., L.L.B., Presiding Officer

(Friday the 29th day of August 2008/7th Bhadrapad 1930)

I.D. 13 of 2006

I.D. 14/2000 of Labour Court, Ernakulam

Workman: Sri K.S. Santhosh, 81578, Rohini, Kalathiparambil House, Koovalpadam, Cochin-682002.

By Adv. Sri C. Anilkumar

Management: The General Manager, M/s. Forbes Gokak Ltd.,

Forbes Divison Shipping, Patvok Building, Indira Gandhi Road, Cochin-682003.

By Adv. Sri V.J. Mathew.

This case coming up in Adalath on 29-08-2008, this Tribunal-cum-Labour Court on the same day passed the following.

AWARD

This is a reference made under Section 10(1)(d) of Industrial Disputes Act

2. When the matter came up for hearing the parties expressed their willingness for a settlement. Hence the reference was taken up in Adalath and discussed among the parties. They came to a settlement and a separate agreement was signed by the parties.

In the result, an award is passed in terms of the settlement which will form part of the award.

The award will come into force one month after its publication in the Official Gazette.

Dictated to the Personal Assistant, transcribed and typed by her, corrected and passed by me on this the 29th day of August, 2008

P. L. NORBERT, Presiding Officer

Appendix

Nil

नई दिल्ली, 10 सितम्बर, 2008

का. आ. 2801. औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मै. फोर्ब्स गोकक लिमिटेड के प्रबंधकों के संबद्ध नियोज्जकों और उनके कर्मचारों के बीच अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, इर्नाकुलम के पंचाट (संदर्भ सं. आई.डी. 313/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10-9-2008 को प्राप्त हुआ था।

[सं. एल-29012/53/1999-आईआर (एम)]

कमल बाखरु, डेस्क अधिकारी

New Delhi, the 10th September, 2008

S. O. 2801. In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. I.D. 313/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Ernakulam now as shown in the Annexure, in the Industrial dispute between the employers in relation to the management of M/s. Forbes Gokak Ltd. and their workmen, which was received by the Central Government on 10-9-2008.

[No. L-29012/53/1999-IR(M)]

KAMAL BAKHRU, Desk Officer

ANNEXURE

New Delhi, the 10th September, 2008

IN THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, ERNAKULAMPresent: Shri P. L. Norbert, B.A., L.L.B., Presiding
Officer

(Friday the 29th day of August 2008/7th Bhadrapadh 1930)

I.D. 313 of 2006

I.D. 17/2000 of Labour Court, Ernakulam

Workman : Sri. T.K. Dinesh Kumar,
C/o. T.K. Geetha, 3/93,
Samootha Parambu,
Perumpadanna, North Parur, Cochin.

By Adv. Sri C. Anilkumar.

Management : The General Manager,
M/s. Forbes Gokak Ltd.,
Forbes Divison Shipping,
Patvolk Building, Indira Gandhi Road,
Cochin-682003.

By Adv. Sri V.J. Mathew.

This case coming up in Adalath on 29-08-2008, this
Tribunal-cum-Labour Court on the same day passed the
following.

AWARD

This is a reference made under Section 10(1)(d) of
Industrial Disputes Act.

2. When the matter came up for hearing the parties
expressed their willingness for a settlement. Hence the
reference was taken up in Adalath and discussed among
the parties. They came to a settlement and a separate
agreement was signed by the parties.

In the result, an award is passed in terms of the
settlement which will form part of the award.

The award will come into force one month after its
publication in the Official Gazette.

Dictated to the Personal Assistant, transcribed and
typed by her, corrected and passed by me on this the
29th day of August, 2008.

P. L. NORBERT, Presiding Officer

Appendix —Nil

नई दिल्ली, 10 सितम्बर, 2008

का. आ. 2802.—औद्योगिक विवाद अधिनियम, 1947
(1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मै.
फॉर्ब्स गोकक लिमिटेड के प्रबंधन के संबंध में नियोजकों और उनके
कर्मचारियों के बीच अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय
सरकार औद्योगिक अधिकरण/श्रम न्यायालय, इर्नाकुलम के पंचाट
(संदर्भ सं. आई.डी. 311/2006) को प्रकाशित करती है, जो केन्द्रीय
सरकार को 10-9-2008 को प्राप्त हुआ था।

[सं. एल-29012/54/1999-आई.आर.(एम.)]

कमल बाखरू, डेस्क अधिकारी

S.O. 2802.—In pursuance of Section 17 of the
Industrial Disputes Act, 1947 (14 of 1947), the Central
Government hereby publishes the award (Ref. No. I.D. 311/
2006) of the Central Government Industrial Tribunal-cum-
Labour Court, Ernakulam now as shown in the Annexure, in
the Industrial dispute between the employers in relation to
the management of M/s. Forbes Gokak Ltd. and their
workmen, which was received by the Central Government on
10-9-2008.

[No. L-29012/54/1999-IR(M)]

KAMAL BAKHRU, Desk Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, ERNAKULAMPresent: Shri. P. L. Norbert, B.A., L.L.B., Presiding
Officer

(Friday the 29th day of August 2008/7th Bhadrapadh 1930)

I.D. 311 of 2006

I.D. 15/2000 of Labour Court, Ernakulam

Workman : Sri. K. Surendran, 29/169A,
Susheel Bhavan, Near TOC H School,
Janatha Road, Vyttila, Cochin-682019.

By Adv. Sri C. Anilkumar.

Management : The General Manager,
M/s. Forbes Gokak Ltd.,
Forbes Divison Shipping,
Patvolk Building, Indira Gandhi Road,
Cochin-682003.

By Adv. Sri V.J. Mathew.

This case coming up in Adalath on 29-8-2008, this
Tribunal-cum-Labour Court on the same day passed the
following:

AWARD

This is a reference made under Section 10(1)(d) of
Industrial Disputes Act.

2. When the matter came up for hearing the parties
expressed their willingness for a settlement. Hence the
reference was taken up in Adalath and discussed among
the parties. They came to a settlement and a separate
agreement was signed by the parties.

In the result, an award is passed in terms of the
settlement which will form part of the award.

The award will come into force one month after its
publication in the Official Gazette.

Dictated to the Personal Assistant, transcribed and
typed by her, corrected and passed by me on this the
29th day of August, 2008.

P. L. NORBERT, Presiding Officer

Appendix : —Nil

नई दिल्ली, 10 सितम्बर, 2008

AWARD

The matrix of the facts as culled out from the proceedings are as under :

2. The Government of India, Ministry of Labour by its Order No.L-110114/2003-IR(M) dated 20th March, 2003 & L-110114/2003 IR(Misc) dated 25-10-2007 in exercise of the powers conferred by clause (d) of sub-section(1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following dispute to this Tribunal for adjudication:

- "1. Whether the contract between Airport Authority of India and the respondents contractors, is a sham and bogus and is a camouflage to deprive the workers concerned in the petition of benefits available to permanent workmen of Airport Authority of India?
2. Whether the workers concerned (list attached) in the petition should be declared as permanent workers of Airport Authority of India?
3. What are the wages and consequential benefits to be paid to the workers concerned in the petition?"

3. To support the subject matter in the reference the Statement of Claim is filed by the 2nd Party, Union through its Vice President, different time but now finally at Exhibit U/3 B making out the case that the 1st Party, employers carry out its activities at various places in India such as Mumbai, Delhi, Chennai, Kolkata, etc. in all around 120 Airports all over the country. The total work force employed by the employer company consists of permanent employees, casual workers and contract employees. The present proceedings relate to a set of workmen numbering to 35 workmen, whose names and other details are mentioned in the list enclosed with it at Annexure-I. Concerned Workmen are working in the Civil Maintenance work, which is an integral part of the regular, permanent and perennial activities of the 1st Party i.e. Airport Authority of India. The duties carried out by the concerned workmen are of such a nature that the same have never been severable from the main activities carried out by the employer at various Airports in India. The Mumbai Airport is the largest Airport in India having domestic terminal building at Santacruz and International Terminal building at Sahar, Mumbai. At domestic terminal at Santacruz there is largest traffic in India and there is constant flow of passengers and cargo traffic, using the Airport facilities. The services rendered by the workers, irrespective of their category, are of important nature because the continuous flow of passengers and cargo. As far as International passengers are concerned, the nature of duties entrusted to all the workers, including the workers concerned, is of vital importance, as the international passengers carry on impression about our country based on their views of the Airports. The domestic terminal building situate at Santacruz has two terminals which are known as Terminal 1A from where the flights of Indian Airlines and Alliance

का. आ. 2803.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एयरपोर्ट ऑथोरिटी ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय सं.-11, मुम्बई के पंचद (संदर्भ सं.-संजीआईटी-2/56/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10-9-2008 को प्राप्त हुआ था।

[सं. एल-110114/2003-आईआर (एम)]

कमल बाखरु, डेस्क अधिजात

New Delhi, the 10th September, 2008

S.O. 2803.—In pursuance of Section 17 of the Industrial Disputes Act, 1947(14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT-2/56/2007) of the Central Government Industrial Tribunal Labour Court, No.2, Mumbai as shown in the Annexure, in the Industrial dispute between the employers in relation to the management of Airport Authority of India, and their workmen, which was received by the Central Government on 10-9-2008.

[No. L-110114/2003-IR(M)]

KAMAL BAKIRU, Desk Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR
COURT NO.-2, MUMBAI**

PRESENT

A. A. LAD,

Presiding Officer

REFERENCE No.CGIT-2/56, OF 2007

(Old No.CGIT-1/14 OF 2003)

Employers in Relation to the Management of Airport
Authority of India

Airport Authority of India,

Chhatrapati Shivaji International Airport Terminal

1B, Mumbai.

...1st Party

AND

Their Workmen represented by

Indian Airport Kamgar Union,

Having its office at C/o.Baiju Korothe,

Maggie D'Souza Chawl, Tank Pakadi,

Sahar Village, Mumbai 400 009.

...2nd Party

APPEARANCE

FOR THE EMPLOYER: Mr. Shamarao Patil &
Mr. Avinash Patil, Advocates

FOR THE WORKMEN: Mr.A.P.Kulkarni, Mrs.Monika
Sakhrani, Advocates

Date of reserving Award: 2nd May, 2008

Date of passing of Award: 26th May, 2008.

Air take off and land and the other terminal is known as Terminal IB from where the flights of private airlines such as Jet Airlines, Sahara Airlines, etc. take off and land. Terminal IB was constructed prior to 1972 and the permanent employees/workers are carrying out function of civil maintenance of the terminal building. In Terminal IB there are around 28 permanent workers who are carrying out the function of civil maintenance of the terminal building. In Terminal IB there are around 28 permanent workers who are carrying out the function of civil maintenance thereof. The 2nd Party Union further submitted Terminal IA, which is also known as New Domestic Terminal Complex (NDTC) was commissioned in the year 1992 and one of the permanent workers were posted or employed there for carrying on civil maintenance work, since the Inception of Terminal IA. The names of the workmen concerned in the present Reference and employed at IA are: (1) Mr. Jalinder Kamble, Carpenter, (2) Mr. Gurnath Jadhav, Mason, (3) Mr. Rajesh Yadav, Plumber, (4) Vashisht Yadav, Plumber, (5) Mr. Rabi Ray, Plumber, (6) K. Chinapaya, Helper/Beldar, (7) Mr. Anand Mane, Helper/Beldar, (8) Mr. Mahindra Patil, Helper/Beldar, (9) Mr. Mangesh Ramban, Helper/Beldar, (10) Mr. Suresh Ruke, Helper/Beldar, (11) Mr. Dinesh Karekar, Helper/Beldar, (12) Mr. Fredrick John Lobo, Helper/Beldar. Union further submitted that the aforesaid workmen are carrying out the work of Plumbing, Carpentry and Masonry work and some of them are helpers. Their work is of continuous nature. They are provided with instruments, materials, apparatus etc. etc. The Union further submits that, the workers employed at Terminal IA are required to work in 4 shifts and some of the workers are required to work only in the general shift. The workers employed in the categories of Carpenter, Mason and Plumber are required to work only in the general shift. All the workers are issued necessary entry passes by the Management of the 1st party. All the workmen employed at Terminal IA were required to sign attendance register kept in the respective offices and these registers were/are counter-signed, for the purpose of authentication by the Junior Engineer. The Union submit that, muster-rolls are maintained all these years. These muster rolls contain details such as "General Shift, Shift duties" etc. as well as the designations of the workmen. The entire work is being carried on the premises of the Airports Authority of India. None of the representatives of the so-called Contractor is present at the premises to oversee the work of the workers. The muster rolls of the workers are maintained by the Junior Engineer/Sr. Superintendent of Terminal IA, who certifies the register under his signature and signs each day's notes of the general shift and the shifts of the staff. The muster-rolls are kept in the custody of J.E./Sr. Superintendent. The Union submits that, the work, in which the concerned workmen are concerned, is also being done by the permanent workmen, in the older terminal of Mumbai Airports. In 1986, when the new terminal was commissioned,

the Airports Authority of India i.e. the 1st Party deliberately and intentionally did not sanction the appointments of permanent workmen for the maintenance of this terminal and instead decided to employ workers through sham and bogus contractors with a view to exploit these Workmen and with a view to deny them the benefits due and payable under the various industrial laws. The Union further submitted that the modus operandi adopted by the 1st Party was that the workers were employed through intermediaries or the so-called contractors and such workers were never given statutory benefits such as provident fund, ESI, minimum HRS, Medical benefits, bonus etc. and similarly these workers were also not given the benefits available to the permanent workmen. Union further submitted that it is pertinent and significant to state that these workers were, in fact, entitled to receive the same, similar and identical benefits without discrimination between them and the other permanent workers, from the dates of respective appointments, because based on the principle and doctrine of 'equal pay for equal work, these workers had/have statutory right of being at par with the permanent workers in the matters of emoluments and other terms and conditions of employment. However, the same was denied to them by artificial means and by subterfuge the conspectus of employment. In other words, the artificial, sham and bogus contractors were introduced by the 1st Party-employer with a view to deprive the workers concerned, of their statutory benefits under the various Industrial Laws. Similar and identical modus operandi was also deployed by the 1st Party employer for engagement of such workers by recruiting them through Junior Engineer, Assistant Engineer, Executive Engineer. These, JE, Asst. Engineer, and Executive Engineer used to recommend the names of the candidates who were to be recruited and allotted to a set of so called contractors. The Carpenters are appointed through J.E. and Executive Engineer. A beldar is appointed through J.E., Assistant Engineer and Executive Engineer. Union further submitted that the so-called contractors whose names go on changing, are mere name-lenders. It is submitted that, the Airport Authority of India, i.e. 1st Party has engaged the so called contractors in names and styles as (1) M/s. Nediya Construction, (2) M/s. Rojiwada Construction, (3) M/s. J.P. & Brothers, (4) M/s. Reena Enterprises, (5) M/s. Samson Construction, (6) M/s. Vini Enterprises, (7) M/s., Intercon, (8) M/s. Profesco and (9) M/s. D'Souza Construction Co. The Union further submitted that, these parties are not genuine parties. These names are nothing but a subterfuge and camouflage. These so called parties or so called contractors have never obtained any registration as Commercial Establishment under the Shops and Establishments Act or under the Factories Act. These Contractors are changing many a times old so called contractors go away and in their places new so called contractors are introduced by the 1st Party. The workers, however, remain the same despite the change of the so called contractors. The nature of work, which the

workers concerned in the present proceedings have been carrying out since last several years, has never been the work of intermittent or temporary nature. There have been changes in the Pame-Lending contractors, but the sets of workers have always remained the same. The nature of duties performed by the concerned workers have been of permanent and perennial nature. 2nd Party further submitted that, 1st Party has been maintaining documentation in respect of the workers covered under the present Reference. These documents clearly reveal that, there is direct supervision and control of the work and the duties carried out by the concerned workers are controlled, supervised by the Executives, Officers, Engineers, Sr. Superintendents, Junior Engineer, Engineer-in-charge etc. of the 1st Party. The Civil Maintenance Department of Terminal 1A is headed by Assistant General Manager under whom there are two Managers viz. Manager Engineering (M.E.) in charges of Terminal 1A and 1B respectively. Under these MEs there are Assistant Manager Engineering who were previously known as Assistant Engineers, in each of the sub-division of the Civil Maintenance Department and in the last level there are Junior Engineers who now known as Senior Superintendents in Civil Maintenance Department - Terminal 1A, where the present set of workers are employed. The workers covered under the present reference, who are only labelled as the contractors' workers, are/were under the direct supervision and control of the Senior Superintendent and of the MEs of the Department who are the permanent workmen working in their respective Terminals. Union submits that, it is, therefore, crystal clear that as far as the nature of the supervision and control is concerned there has been never any difference of whatsoever nature between the permanent workers and the workers covered under the present Reference. In other words, the activities of Civil Maintenance Department, which are carried out on the premises of the 1st Party cannot be segregated, separated or carved out of the entire work and activities of the Airports Authority of India. This essentially goes to show that the nature of duties performed by the workers irrespective of their labels (i.e. whether permanent or temporary or otherwise) are of perennial nature, important nature and are the integral part of the main activities of the establishment of the 1st Party. The 2nd Party further submitted that, the workers concerned in the present Reference are undisputedly required to work in shifts. The method and manner in which the duties are allotted and the instructions are issued to the workers covered under the present Reference as well as the permanent workmen, are the systematic activities carried out in the establishment of the 1st Party. It is pertinent to note that, the judicial tests which are applied while determining the issue of 'undertaking' or 'Industrial Establishments' envisaged and contemplated under the provisions of the I.D. Act, 1947, in terms of Section 2(k) (a) thereof, the Civil Maintenance Department of the 1st Party satisfies the test of nature of industry in itself. Apart from

this, the very fact that the allocation of the work to the concerned workers employed in Civil Maintenance Department, irrespective of their status, is entrusted in the hands of the Engineer-in-charge, is itself one of indications and pointer to show that all the workers concerned in the present Reference, employed with Civil Maintenance Department, irrespective of their status, is entrusted in the hands of the Engineer-in-charge, is itself one indications and pointer to show that all the workers concerned in the present Reference, employed with Civil Maintenance Department of Terminal 1A are the direct employees of the 1st Party i.e. Airports Authority of India and introduction of the so called contractors is nothing but subterfuge and device to refute and deny the real and direct employer employee relationship between the 1st Party - employer and the workers concerned, who are covered under the present reference. The allotment of shifts is also controlled by the Manager Engineering (C-1), who issues duty roster for particular period with the names of the workers who are allotted particular shifts during the periods specified in the duty roster. In this behalf, it is submitted by the Union that, in the industrial establishments of this nature, the duty rosters have their own importance. The duty rosters, which are prepared by the Management, is a sort of advance notice issued to the workers as to in which shift and at which time they should report and perform their duties. Thus, preparation of duty roster and specifications of the shifts therein by the JE [now known as Sr. Superintendent (C-1)] is one of the factors which indicate that, the workers covered under the present Reference are issued instructions by the officials/executives/ engineers/managers etc. of the 1st Party. The name lending contractors, who are merely introduced as intermediaries, have no role to play in these matters. As far as leave of any of the workers is concerned, he has to apply to the Sr. Superintendent/J E, for the same, who sanctions it. The 2nd Party Union submits that, even in the case of permanent workers, the same system/method is followed in the matters of their leave. The workers covered under the present Reference are never given any fixed quantum of leave. But on the other hand, their wages are deducted by the Management whenever these workers proceed on leave. The significance of leave has been only as "leave of absence" and nothing more. There is, in fact, gross illegality and discrimination in the matters of leave because even the temporary workers, casual workers or casual workers etc. are entitled for certain fixed quantum of leave. It is submitted by the Union that, as far as Identity Cards are concerned, the permanent workers are issued with Identity Card and even prior to 1978 the so-called contract workers were also issued identity cards. Thereafter, they (i.e. contract workers) are issued with passes and tokens. The concerned workers are required to obtain, everyday, what is colloquially known as "Parchi" which contains the following columns in the form of rubber stamps :

Name of Company
Name of Labour
Token No.
Area Allotted NTB/N
DTC Building
Issue Date

These columns and information therein is based on the monthly letters which are issued by the 1st Party to the so-called contractors, signed by the J.E./Sr. Supdt., Assistant Engineer, Engineer-in-Charge, Dy. General Manager (Civil) etc./ the 1st Party has been maintaining meticulous records regarding entry/exit and presence of the persons on the establishment of the Company, including the workers concerned. These records are called entry passes and/or tokens. These passes/tokens are issued on daily basis by the Bureau of Civil Aviation Security (BCAS). Token numbers are written on every day's passes. At the end of the day/shift, the token is taken away from the workers concerned. In fact, though all the workers concerned in the present Reference, as well as those concerned in Writ Petition No.78 of 2000 were continuously working, after filing the Writ Petition, with a view to create false impression about the temporary nature of work and with a view to conceal the truth and the real nature of employment, in respect of the workers concerned, different methods and devices are followed by the Management of 1st Party through the Engineer-in-charge and the names of the workers were, at times, struck off and instead of such workers, names of some other workers were substituted. The allocation of work, to be performed by the workers concerned in the present Reference is done by the Engineer-in-charge. The names of some of them are Shri Ravindra Node, Ms. Sunita Pimple, Shri Vishwas Mooley, Shri R.N. Singh, etc. The work of civil maintenance is ongoing and continuing due to the heavy traffic of passenger and cargo, there is constant wear and tear of the facilities and it is imperative that the maintenance is required to do immediately and continuously as per requirements in order to maintain a standard of the airport and to provide these essential hospitality services to the passengers, staff and other associates who use the airport terminals. The cleaning of toilets, continuous water supply and general maintenance of the building are essential to the functioning of the activities of the 1st Party Employer, i.e. Airports Authority of India. It is for these reasons, amongst other, that the 1st Party has four departments, which look after day-to-day maintenance of the establishment/airports. These four departments are Housekeeping Department (HK), Civil Maintenance Department (CMD), Electrical Maintenance Department (EMD) and the Electronics Department (ED). These four departments in harmony with each other perform the functions of maintenance of the airport. It is further submitted by the Union that for performance of the maintenance of the building, the Manager House Keeping (MHK) or Executive

Housekeeping (EHK) along with the Manager-Engineering, Civil (MEC) and the Manager-Engineering Electrical (MEE) or the representatives of these two departments are required to do a thorough check of the terminal building and to note down the observations and actions required by the concerned departments in a register called as "Daily Dedicated Group Register". This Register is signed by the representatives of the three departments. A copy of this, DDG is kept with each department. The Civil Maintenance Department's copy of the said DDG is with the Manager Engineering (ME) who keeps it in a Diary maintained by the Civil Maintenance Department (CMD) and the Diary and date carry seal of the Department. The Manager Engineering (ME) makes a notice on the DDG allotting work to the JE/Senior Superintendent concerned, who in turn, allots it to the workers who carry out the necessary work. The JE/Senior Superintendent personally oversees the work being done by the concerned workers and they report the matter to the Manager Engineering (ME). The Engineer-in-charge also maintains Register for Civil Complaints/Requirements, which is certified by the JE/Senior Superintendent and the Assistant Engineer, based on the complaints received from the Housekeeping Department and the Airport Manager. The work is then allotted to the concerned workers who carry out the necessary work. In the CMD-I A. where the concerned workers are employed, Shri V.R.Mule is the Senior Superintendent at present and earlier Ms. Sunita Pimple was the Senior Superintendent who has recently been transferred to Delhi. Register for Civil Complaints/Requirements contain the following columns :

Serial Number
Nature of Complaint
Received from Date of Receipt
and time of Receipt
Attended by
Date and time attended:
Cause of Problem
Signature of the Junior Engineer (Civil)
Signature of the Assistant Manager Engineering (Civil)

Such Registers are being maintained by a period of last around 8/9 months. The maintenance of such registers was started by the 1st Party after introduction of ISO 901. In fact, the letterheads of Airports Authority of India (International Airport Division) also carry the logo/stamp of "LLOYD'S REGISTER QUALITY - UKAS QUALITY - ASSURANCE ISO 9001 MANAGEMENT 001". In the general shift, there are JEs and Senior Plumbers, who are permanent employees. In the 1st shift also, there are JEs and Plumbers. In the second shift, there are permanent plumbers and JEs upto 5 P.M. In the third shift there are plumbers, sewermen and helpers. The workers concerned in the present Reference are also required to work in all the four shifts. The registers for civil complaints/requirements

are maintained in all shifts. The entries in such registers are pertaining to :

Senior plumber
Complaint
Received from
Date and time of receipt
Attended by :
Date of Attendance
Problem
Junior Mate Signature
J.E. Signature

Union submits that, if any material is required for carrying out the task of attending the complaint, the Senior Superintendent who has custody of the stores, provides the material and makes noting of the same in the "Material Issued Register" which is kept in his custody. The Senior Superintendent also maintains the Work Diary, wherein he writes and certifies the work done by the workers concerns and the same is kept in his custody. On the basis of the Work Diary, the Engineer-in-charge prepares payment bills of the so called name-lender contractors and then payment is made to them. The work diary is maintained under the signatures of the JE, AME and ME. Apart from these records, the Airport Manager (APM) also maintains a record of complaints received during the time when the Engineer-in charge is not on duty and allots the work to the shift staff based on the complaints received. All the registers are in the custody of the JE.

4. The Second Party Union submit that prior to 2001 when on the advice of ISO, in order to attain International standards of maintenance of the airports, the maintenance of the building was done through the Manager-Housekeeping who did a thorough check of the terminal building and sent a Job Request in the prescribed proforma to the Manager Civil (IA), to carry on the specific tasks. The proforma of the Job Request of the House Keeping Section, Mumbai Airports Authority of India i.e. the 1st Party, contains a reference number, date, from and to details and the columns with the following details:

Serial Number Area
Complaint

Remarks (this contains the remarks made by the Engineer-in-charge with his signature upon the task being attended).

The form also contains the details of the person who received the request, who made the request, person who completed the job, the person who verified the job and the dates on which the same were done. 2nd Party submits that, a substantial part of the responsibility of the airport managerial personnel is the supervision and control of the work being performed by the alleged/so called contract workers i.e. of the workers covered under the present reference. The Operations Department has issued the Job Description (Duties and Responsibilities of the Airport Manager of Terminal IA, which includes:

- (i) To keep a record of the shift personnel on duty, their attendance and leave record;
- (ii) To inspect the terminal building for cleanliness and check all passenger amenities like lounge furniture, toilets, drinking water facilities, PA System, CCTV, flight information Boards (Display-slip flat type), lift escalator, conveyor belts etc. to ensure that they are available and functioning in a complaint free manner,
- (iii) To ensure maintenance of the areas in the immediate vicinity of the terminal building to ensure that they are kept clean and there is no likelihood of congestion anywhere at any time.
- (iv) To ensure that there is no water logging on the city and airside of the terminal building and to take corrective action if required;
- (v) To ensure that reserved lounges are maintained well and allotted to entitled persons only.
- (vi) To supervise and control the working of all staff of IAAI on shift duty (including civil and electrical departments) in coordination with AE/JE.

The 2nd Party further submits that the workers covered under the present Reference, sit in the room outside the JE's office during the general shift and are allotted work by the JE who receives the complaints. At the end of the general shift, when the JE leaves, the office is locked and the workers in the shifts operate from the Pumphouse where they received complaints from the Airport Manager. The Plumbers during the shifts maintains a similar register of complaints under the direction of the JE, which is checked and countersigned by the JE who makes a noting of the same. The Second Party further submits that the Wage Bill is prepared by the Junior Engineer on the basis of the records maintained by him and he sends the details of the same to the so called contractor who prepares the wage bill in accordance with the information furnished by the JE. There is no supervisor on duty in Terminal IA Civil Maintenance Department at present and the supervision of the work is done by the JE. It is thus apparent that the rates of wages are determined and decided by the 1st Party. The so called name-lenders/so called contractors have absolutely no say in these matters. It is one of the indication which show that, there is direct employer/employee relationship between the 1st Party i.e. Airport Authority of India and the workers covered under the present Reference. The Union further contended that the category of workmen involved in the present dispute are workmen who were earlier carrying on the work of maintenance of Terminal II B while it was functioning and now are employed to carry on the work of Civil Maintenance of Terminal II C as Plumbers, Masons and Helpers/Beldars. The huge building of the International Airport is divided

into three Terminal Buildings viz. Terminal IIA, IIB and IIC. At present Terminal II B is not functioning. Permanent workers are carrying on the work of Civil maintenance of Terminal IIA. The extent and the nature of the work is the same. The 1st Party as a policy decision decided to employ contract workers in the terminal II B when it was constructed though regular workers were employed to carry out the work on civil maintenance in the old terminal Civil maintenance is an essential, incidental and an integral part of the 1st Party and involves the maintenance of the Airport Terminals where there is continuous flow of passengers and other traffic and the surrounding areas. The maintenance of the Airports is essential and continuous function and one of the main functions of the Airport Authority of India. If the same is not carried on even for a single day, the entire operations of the Airport authority of India will come to a stand still. Terminal II C is four stories and includes Ground, Mezzanine, first and second floor. The terminal building admeasures 30,770 sq m of flooring. There are 9690 Sq. M of columns and wall cladding, 28810 Sq. M of false ceiling, 6750 Sq. M of Glazing, 4260 RMT of Sewerage/drainage pipes, 1460 RMT of water supply pipes, 11 number of toilet shafts and 1 Garage Chute. Apart from that there are 8 toilets on the ground floor, 12 on the mezzanine, 6 on the 1st floor and 2 on the second floor. The work of the maintenance of all this area is being carried on by the concerned Workmen. The Union submits that the work is of continuous in nature. This is evident from the various inter-departmental communications of the 1st Party itself. On 10-9-1999, Shri A. D. Kanan, the Senior Manager Engineering(c) II, issued an office notice to the DGM (Law) through the DGM (Civil) bearing No. AAB/CMD-II/22/99/413 wherein he confirmed that the Terminal II B/IIC building cannot be maintained without the work of the present Workmen. On 31-10-2002 the Manager Engineering (c)-SG-SD-II, Mr. M.R. Pushkaran issued a letter to the Security incharge CISF Airport Zone, Terminal 2, Mumbai, a letter bearing No. AAB/CMD-II/2002-2003 asking for the issue of Tokens to the Workers when due to security reasons entry Tokens for the Terminal building was not being issued as it was of an urgent nature to attend any civil complaint round the clock like maintenance of toilets and buildings etc. for the floors of MOTC (T-2 building). They are provided with instruments, materials apparatus etc. required, by the 1st Party, for plumbing work to perform their respective duties. The officials of the 1st party are also working at Terminal IIC to give instructions and to supervise the work of the concerned Workmen. The designations of such officials are as Junior Engineer (J.E)/Sr. Superintendent, Assistant Engineer/Manager Engineer and Assistant General Manager. The names of such persons are Mr. M.R. Pushkaran, the Manager Engineering (C) G-SD-II, Shri G. Hoda and Shri Vinay Tamrak - JE/Sr. Superintendents. The Workers employed at Terminal IIC are required to work in 4 shifts. Some of the Workmen are required to work only in the

General shift, the Workers employed in the categories of Carpenters, Mason and A Plumber, are required to work only in the general shift. All the workers were/are issued necessary entry passes by the Management of the 1st Party. All the workmen employed at Terminal IIC were required to sign attendance register kept in the respective officers and these registers were countersigned, for the purpose of authentication, by the Junior Engineer. The Union further submitted that Muster rolls are maintained all these years. The entire work is being carried on, in the premises of the 1st Party. None of the representatives of the so called contractor is present at the premises to oversee the work of the Workers. The muster rolls of the Workers are maintained by the Jr. Engineer/Sr. Superintendent of the Terminal IIC, who certifies the register under his signature and signs each day's notes of the General Shift and the shifts of the staff. The muster rolls are kept in the custody of the JE/Sr. Superintendent.

5. Union further submitted that, the work, in which the set of workmen covered under the present adjudication proceedings are concerned, is also being done by the permanent Workmen, in the older terminal of Mumbai Airports in 1986, when the new terminal was commissioned, the 1st Party employer herein, deliberately and intentionally did not sanction the appointments of permanent workmen for maintenance of this terminal and instead decided to employ workers through sham and bogus contractors with a view to exploit these Workmen and with a view to deny them the benefits due and payable under the various industrial laws. It is further submitted by the Union that the modus operandi adopted by the 1st Party was that the workers were employed through intermediaries or the so called contractors and such Workers were never given statutory benefits such as Provident fund, ESI, minimum HRS, medical benefits, bonus etc.

Similarly, these workers were also not given the benefits available to the permanent Workmen and it is pertinent and significant to note that, these workers were, in fact, entitled to receive the same, similar and identical benefits without discrimination between them and the other permanent workers, from the dates of respective appointments. However, the same was denied to them by artificial means and by subterfuging the conspectus of employment. In other words, the artificial, sham and bogus contractors were introduced by the 1st Party with a view to deprive the workers concerned, of their statutory benefits under the various Industrial laws. Similar and identical modus operandi was also deployed by the 1st Party employer for engagement of such workers by recruiting them through Junior Engineer, Assistant Engineer, Executive Engineer. These, JE, Asstt. Engineer and Executive Engineer used to recommend the names of the candidates who were to be recruited and allotted to a set of so called contractors e.g. carpenters are appointed through JE and Executive Engineer. These contractors are not

genuine parties. These names are nothing but a subterfuge and camouflage. These so called parties or so called contractors have never obtained any registration as Commercial Establishment under the Shops and Establishment Act or under the Factories Act, as a factory. These Contractors are changing. Many a times old so called Contractors go away and in their places new so called contractors are introduced by the 1st Party. The Workers, however, remain the same despite the change of the so called Contractors. The nature of work which the workers concerned in the present proceedings have been carrying out since last several years, has never been the work of intermittent or temporary nature. There have been changes in the name-lending Contractors, but the sets of Workers have always remained the same. The nature of duties performed by the workers concerned has been of permanent and perennial nature. It is further submitted by the Union that, the 1st Party has been maintaining documentation in respect of the workers covered under the present Reference. These documents clearly reveal that, there is direct supervision and control of the work and the duties carried out by the concerned workers by the executives, officers, Engineers, Sr. Superintendents, Junior Engineer, Engineer-in-charge etc. of the 1st Party. It is, therefore, crystal clear that as far as the nature of supervision and control is concerned, there has never been any difference of whatsoever nature between the permanent workers and the workers covered under the present Reference. As far as the nature of duties are concerned also, there is no difference whatsoever between these two sets of workers. The purpose of having a Civil Maintenance Department is to cater to the needs of the 1st Party employer which arise from time to time and it is the said Department which itself is an integral part of the establishment of the 1st Party is one of the most important departments. The work of other Departments is carried out effectively because of the output of the workers employed in the Civil Maintenance Department, in other words the activities of Civil Maintenance Department, which are carried out on the premises of the 1st Party cannot be segregated, separated or carved out of the entire work and essentially goes to show that, the nature of duties performed by the Workers, irrespective of their labels (i.e. whether permanent or temporary or otherwise) are of perennial nature, important and are the integral part of the main activities of the establishment of the 1st Party. They are performing the duties not only of permanent and perennial nature, but also of essential nature. It is in this back and state of functioning of the Civil Maintenance Department that the allocations of work is done by no less a person/ executive than the Engineer-in-charge. The method and the manner in which the duties are allotted and the instructions are issued to the workers covered under the present Reference as well as the permanent workmen, are the systematic activities carried out in the establishment of the 1st Party. Apart from this, the very fact that the

allocation of the work to the concerned workers employed in Civil Maintenance Department, irrespective of their status, is entrusted in the hands of the Engineer-in-charge, is itself one of indications and pointer to show that all the workers concerned in the present reference, employed with Civil Maintenance Department of Terminal IIC are the direct employees of the 1st party and introduction of the so called Contractors is nothing but subterfuge and device to refute and deny the real and direct employer-employee relationships between the 1st Party and the concerned workers, who are covered under the present Reference. The Duty Roasters, which are prepared by the Management, is a sort of advance notice issued to the workers as to in which shift and at which time they should report and perform their duties. Thus preparation of Duty Roaster and specifications of the shifts therein by the ME is one of the factors which indicate that the workers covered under the present Reference are issued instructions by the officials/Executives/Engineers/Managers etc. of the 1st Party. The name-lending Contractors, who are merely introduced as intermediaries, have no role to play in these matters. It is the Management of the 1st Party who refused rejected or sanctioned leave of the workers covered under the present Reference. It is pertinent to state that even in case of permanent workers, the same system/method is followed in the matters of their leave. However, in case of the workers covered under the present reference, whenever they are absent from duties or whenever they intend to go on leave, they have to mention the same in writing. The Senior Superintendent also maintains the Work Diary, wherein he writes and certifies the work done by the workers concerned and the same is kept in his custody. On the basis of the work Diary, the Engineer-in-charge prepares payment bills of the so called name-lender contractors and then payment is made to them. The work diary is maintained under the signatures of the JE, AME and ME. Apart from these records, the Airport Manager (APM) also maintains a record of complaints received during the time when the Engineer-in-charge is not on duty and allots the work to the shift staff based on the complaints received. All the registers are in the custody of the Senior Superintendent.

(6) Union further submitted that, the contracts itself reveal that the entire contract is a sham and the 1st Party has entire supervisory control over the work performance by the workmen concerned prior to the Workmen approaching the High Court, the work contracts specified that, the contract was for supply of labour only and only from the year 1998 onwards. After the workmen had filed the Writ Petitions 1st Party started monitoring "Job Work" in their contracts. The 2nd Party called upon the 1st Party to produce the contracts issued prior to 1998 which are identical in terms and conditions to those issued from 1998 onwards except for the fact that those contracts specifically mention in the subject of the Contract that the Contract is for "Maintenance of civil work in T-2 B (Labour)", while the later ones mention "Maintenance of civil works in T-2B

(JOB WORK)". Union further submitted that, this nomenclature does not hide the nature of the contract. In fact after 1998, since most of the workmen are protected by the orders of the Hon'ble High Court, the Contractor has no role to play even in supply of labour and is a mere paper arrangement for routing the money and depriving the Workmen of their rightful wages and claims without prejudice to the above facts. It is also submitted by the 2nd Party that, even prior to 1998 the contracts were a mere paper arrangement and most of the workers have in fact been appointed by the officers and management of 1st party through these sham contractors and that is the reason why they have continued to remain in employment despite the change in the contractors for years even prior to the filing of the Writ Petitions the present Workmen have been in continuous employment for period exceeding 240 days.

(7) Union further submitted that as far as the wages of the concerned workers, are concerned there is great disparity and even in the terms and conditions of employment of these workers who are so called contract workers and the permanent workers. The workmen covered under the present Reference have been thoroughly and totally exploited by the 1st Party. This exploitation continues despite the fact these workers have been performing the very same, similar and identical duties like and at par with the permanent workers of the First Party. There is absolutely no difference in the nature of duties performed by the workers covered under the present Reference and those performed by the permanent workers. However, some paper arrangements are made and some subterfuging arrangements are prepared with a view to conceal the real nexus and nature of employment between the workers involved in this Reference and the 1st Party and to deny them the Provident Fund, ESI, bonus, house rent allowance and other statutory benefits and to deny them the benefits under the Settlements signed for the benefit of permanent workers. It is submitted by the Union that during all these years the 1st Party has failed to pay or to extend even the statutory benefits as stated above, including pension, medical facilities, travelling allowances, etc. to the concerned workers. On the other hand, the permanent workers, who are doing the same duties, are paid higher wages by the 1st Party. They are compensated by way of payment of dearness allowance to meet the costs of living index. They are paid ex-gratia and bonus. They are given House Rent Allowance, leave travel allowance, medical facilities, accident benefits, leave benefits and so many other facilities/benefits. However, all these facilities are denied to the workers covered under the present Reference. Union submits that, the concerned workmen are given step motherly treatment and they are not even extended the just and fair statutory benefits under the various labour laws, by the Management of the 1st Party. The Union submitted that based on the provisions of Article 39 of the Constitution of India, as well as, based on the

doctrine of "equal pay for equal work" the concerned workers are entitled to receive all the benefits, privileges, advantages and other terms and conditions at par with the permanent workers employed under the 1st Party. It is further submitted by the Union that the provisions of the Industrial Employment (Standing Orders) Act, 1946 are applicable to the 1st Party and in view of the definition of the term 'employer' under Section 2(d) thereof the 1st Party itself is the employer of the concerned workers since admittedly the concerned are working on the premises of the 1st Party. These premises are owned by the 1st Party. Thus in the eyes of the law, the 1st Party is the 'employer' in the respect of the concerned workmen. It is further submitted by the Union that, as far as privileges and facilities of the regular and permanent workmen are concerned, as stated earlier, by virtue of periodical Settlements/Agreements signed by the 1st Party with respective Unions, such workmen have been receiving higher wages, allowances and others terms and conditions of employment are being revised regularly and on the other hand, the concerned workmen who are merely labelled as contract workers and by virtue of certain paper arrangements are shown as workers of the so called contractors, are deprived of these statutory benefits for years together by the 1st party. The discrimination practice by the 1st party, apart from being unreasonable and arbitrary discrimination envisaged under Article 14 of the Constitution of India, it also amounts to commission of unfair labour practices under Item 9 of Fifth Schedule, read with Section 2(ra) of Industrial Disputes Act, 1947. Similarly, employing the concerned workmen for years together without awarding them the status of permanent workmen also amounts to unfair labour practices under item 10 of Vth Schedule read with Section 2(ra) of the I. D. Act, 1947. The fact both the sets of workmen i.e. permanent workmen employed by the 1st Party employer and the workers covered under the present Reference, are performing the same, similar and identical duties and both the sets of workmen are working under the control and supervision of the same Management, itself shows that there should not and ought not to be any discrimination in the emoluments, wages and other terms and condition of employment between the two sets of workmen. The Union submitted that, the practice followed by the 1st Party has not only resulted in gross discrimination qua—the workmen concerned in the present Reference, but has also created great disparity between the two sets of workmen, working under the same employer i.e. 1st Party. There are, in fact, two sets of service conditions prevailing in the 1st Party. Union submitted that all the concerned workmen are exploited day in and day out by the 1st Party. There is insecurity of employment for the concerned workmen. It is submitted by the Union that, there is absolutely no justification for the Management of the 1st Party to practice such discrimination between two sets of workmen. However, by introduction of the name-lending so called

contractors and by creation of certain paper records, the concerned workmen are denied equal treatment i.e., treatment at par with permanent workers working in the establishment of the 1st Party. Union further submits that the concerned workmen have been performing the duties of skilled nature and they have also achieved sufficient knowledge and experience of working for several years continuously on the various posts and jobs. However, in spite of this, they are paid very much low wages than the permanent workmen working in the establishment of the 1st Party. The concerned workmen do not get even the benefits like over-time wages, weekly offs, earned leave, etc. etc. The concerned workers are being exploited by the 1st Party like slaves on the establishment of the 1st Party. The concerned workmen are being treated differently by the 1st Party, by not giving them statutory benefits under the various legislatures, such as under PF Act, ES1 Act, Payment of Bonus Act, over time wages, weekly offs, paid holidays, medical facilities to the concerned workmen clearly amounts to breach of mandatory provisions in favour of these workmen and, as such the 1st Party is guilty of unfair labour practices defined under Item 13 of Vth Schedule, read with Section 2(ra) of the Industrial Disputes Act, 1947. The concerned workmen have been kept at the level of minimum wages or even lesser wages than paid to the permanent workmen which is nothing but camouflage because in fact the 1st Party wants to employ the workmen on lower rates of wages, and, therefore, the management of the 1st Party is not inclined to award the status of permanent workmen to the concerned workmen. The entire action on the part of the 1st Party, which is malafide, is nothing but creation of various papers records and with the help of such paper records, to create the impression that the workmen employed at the establishment of the 1st Party are not permanent workmen. The introduction of the so called contractors is nothing but subterfuge and camouflage. The so-called contractors are, in fact, only name lenders because these so called contractors themselves do not possess any technical or other qualifications, which would benefit the establishment of the 1st Party. It is further submitted that, the other concerned workmen viz. Mr. Laxman V. Mahale, Plumber and Mr. Perumal Chinnaiyan, Helper/Beldar employed in the day-to-day maintenance of water supply line at Terminal II-C and external area (CMD II Sub Division IV) carry out the work of ensuring that the entire airport terminal and other buildings situate within the premises of the 1st Party are supplied with adequate water supply. The areas are attended by one Plumber and two helpers, one of whom is permanent workmen in the said Department. The work of checking BMC pipelines is also done by the concerned workmen. Their work is supervised and controlled by JEs. Their attendance is also marked by JEs. and at times supervision and control is exercised by Assistant Manager Engineering (C). Names of such Officers/Engineer are S/Shri Dipak Kavlekar, Sawant, J.P. Yadav, Mistry,

Choudhary etc. The material, instruments etc. which are supplied to these workmen for carrying out their duties by the 1st Party.

(8) It is further submitted by the Union that, the civil maintenance is an essential, incidental and an integral part of the 1st Party and involves the maintenance of the airport terminals where there is continuous flow of passenger and other traffic and the surrounding areas. If the same is not carried on even for a few hours, the entire operations of the 1st Party will come to a stand-still and the continuous flow of water supply is essential to the functioning of the airport. The plumber and helper are on their feet practically for the whole day attending to the various complaints received from the areas where they function. No permanent workers are employed for this important function except for one helper who is working in the Department. Union further submitted that, on 2nd July, 2001, the Assistant Manager (Personnel) Shri Harbit Singh, sent office note on behalf of the Additional General Manager (P & A) to various Heads of Departments including the General Manager (Maintenance) with a form regarding furnishing of information on contract workmen. Union further submitted that, in response to the same the CMD II while furnishing information stated that, the contract for maintenance of water supply line where the present workmen are, employed was a perennial contract and the reason for employing contract labour was given as "contract workers are more efficient and easy to control than department labour". 2nd Party submitted that, the work being carried out by the present workmen is a statutory function and hence employment of contract labours for the same is not permissible under the law. The Airports Authority of India Act, 1994 governs the Administration and Management of all the Airports in India categorically provides power under Section 12 that "it shall be the function of the Authority to manage the Airports, the civil enclaves and the aeronautical communication stations (S.1291)". Section 12(3)(a) states that, the Authority may "plan, develop and maintain, runways, taxiways, aprons and terminals and ancillary buildings of the airports and civil enclaves". Thus employment of contract workers for carrying out a function in the discharge of a statutory obligation is illegal and the workmen employed thus would be deemed to be the workmen of the principal employer and they are eligible for absorption and/or appointment as permanent employees of the 1st Party, which is a well settled legal position by virtue of several judgments of the Hon'ble Supreme Court of India including Steel Authority of India Ltd. vs. National Union Waterfront Workers and Ors. (2001) 7 SCC 1 and 2nd Party relied upon the judgments published in AIR 1999 SC 1160 (Secretary, Haryana State Electricity Board vs. H. Suresh) and AIR 1985 SC 409 BHEL workers' Association and (2008) 87 GLR 7 (J.B. Pant University). The Second Party further submitted that, with respect to the workmen employed in the day-to-day maintenance of existing water supply line in Terminals IIA & IIC at Sahar International Airport in the Civil Maintenance Department (CMD) II Sub-

Division IV, the 1st Party Company had engaged so called contractor M/s. Reena Enterprises in the year 1999-2000 at the time of filing of the Writ Petition. In the year 2000-01 also the said so called contractor, M/s. Reena Enterprises was engaged. In the year 2001-02 the so called contractors M/s. Intercon was engaged and at present for the year 2002-03 M/s D'Souza Constructions, the so called contractor has been engaged as the name lender contractors by the 1st Party Company and that all the contractors and their representatives are mere name-lenders and neither they nor their representatives are present in the premises of the 1st Party during the entire period of work and that none of the workers have any interaction with the contractor who is a mere middleman. The Second Party submitted that, the payment of wages is determined by the 1st Party and the actual wages as determined by the 1st Party are paid to the so called contractors who acts as mere disbursing agencies. The workers are totally dependent on 1st Party for their survival. If the authority chokes out their work the concerned workers would lose their jobs, in as much as, the so called contractors do not have operations that would take care of the employment of these workers. Union further submitted that, whatever contracts i.e., paper arrangements entered into between 1st Party and the so called contractors who have been engaged as intermediate changes from time to time is nothing but sham and bogus arrangement and it is camouflage to deprive the concerned workmen and those concerned in Writ Petition No.78 of 2000 of the benefits available to the permanent workmen of 1st Party.

(9) After 1998 since most of the workmen are protected by the orders of the Hon'ble Mumbai High Court, the so called contractors have no role to play even in supply of labours and it is mere paper arrangement for routing the names of depriving the concerned workmen of their rightful wages and claims.

(10) That, the entire paper arrangement and the so called contracts are against the provisions of Sections 23 and 27 of the Indian Contracts Act and such a paper arrangement is arrived at with a view to deprive the concerned workmen of their statutory benefits and benefits of permanency which the concerned workmen are entitled to receive based on various labour legislations e.g. Provident Fund and Misc. Provisions Act, 1952, ESI Act, Payment of Bonus Act, and Industrial Employment (Standing Orders) Act, 1946. These arrangements, by whatever names these be called, is nothing but sham and bogus arrangements.

(11) That, even prior to 1998, the so called contractors were mere paper arrangement and most of the workmen have been, in fact, appointed by the officials of the 1st Party through the name-lending contractors and this is the reason as to why such workmen have been continued to remain in the employment despite the change in the contractors even prior to the filing of the Writ Petition No.78 of 2000.

(12) That, the concerned workmen are denied the benefits of various settlements/agreements which are signed by the 1st Party and which are applicable to the permanent workmen.

(13) That, the entire arrangement, which is nothing but a mere paper arrangement between the 1st party and the so called contractors, is done to deprive the concerned workman of equal treatment in the matters of payment of wages, allowances, statutory benefits under various settlements/agreements. Thus the continued exploitation of the workmen concerned, by the Management of the 1st party employer, is totally unreasonable, uncalled for and unjustified. These actions are against the principles of equality guaranteed to every citizen of India under Articles 14 and 16 of the Constitution of India.

(14) That, there is no intelligible differentia which justifies such discriminatory treatment to two sets of workmen, which are equally placed i.e. the permanent workmen on one hand and the concerned workmen on the other hand.

(15) That, the so called contracts specify that, the contractors shall deploy minimum man-power daily for carrying out the work and penal recovery would be imposed, for short supply of man-power/labour, at double the rate and that the scope of work and the man-power to be deployed per day for the name is set out in the so called contracts, which include existing water supply line, sluice valve and distribution system, attending various complaints in the building etc.

(16) That, the so called contracts also contain stipulations and terms and conditions in the respective Schedule and there is one Schedule D of the contracts which only relates to the type of personnel to be deployed for work and specify that the supervisory and disciplinary control shall be with engineering-in-charge and it also include some of the items such as right of the engineer-in-charge to remove/replace the workmen, imposing fine upto Rs. 500/- per workman of the so called contractors in case of default, withdrawal of passes of the workmen who are found inefficient or who are found indulging in activities other than the duties assigned to them and other disciplinary control. There are stipulations to the effect that the persons with adequate experience, good workmanship to do the maintenance work only shall be engaged with prior approval of the engineer-in-charge. The contractors, who are mere name lenders, are also expected to see that the workmen which are they bringing on the premises of the 1st Party, shall have good character and they are well behaved and carry necessary skill in their jobs/work. That, the workers are also expected and required to give their particulars such as father's name, residential address, specimen signature/thumb impression etc.

(17) That, there are occasions, that the workmen proposed to be employed through the so called contractors,

are required to undergo medical examination/checkup by the authorized Medical officer of the 1st party;

(18) That, the work of the workmen concerned, which is carried out under the direct supervision and total control of the Civil Maintenance Department of Terminal II is of permanent, perennial, regular and essential nature. The said Department i.e. CMD II is headed by the Asstt. General Manager, under whom there are 3 Manager Engineering (ME) incharge of the Terminal II A, II B/C and External area respectively. Under them there are Assistant Managers (Engineering) in each of the Sub-Div. of CMD and at the lowest level there are 3 Junior Engineers who are now known as Sr. Supdts. In Sub-Division IV -CMF II where the concerned workmen are employed. The supervision and control of these workmen is of Sr. Superintendent and Manager (Engineering).

(19) That, a substantial part of the responsibility of the airport managerial personnel is of the supervision and control of the work being performed by the alleged contract workers. The Operation Department has issued the Job Description Duties and Responsibility of the Airport Manager which includes:

- (i) To keep a record of the shift personnel on duty, their attendance and leave record;
- (ii) To inspect the terminal building for cleanliness and check all passenger amenities like lounge furnitures, toilets, drinking water facilities, P A System, CCTV, flight information Boards (Display - slip flat type), lift escalator, conveyor belts etc. to ensure that they are available and functioning in a complaint free manner;
- (iii) To ensure maintenance of the areas in the immediate vicinity of the terminal building to ensure that they are kept clean and there is no likelihood of congestion anywhere at any time.
- (iv) To ensure that there is no water logging on the city and airside of the terminal building and to take corrective action if required.
- (v) To ensure that reserved lounges are maintained well and allotted to entitled persons only.
- (vi) To supervise and control the working of all staff of IAAI on shift duty (including civil and electrical departments) in co-ordination with AE/IE.
- (vii) To attend to the complaints and suggestions by public and maintain a complaint book which will remain open for public.

(20) That the contracts between the contractors and 1st Party are always stereotyped, identical and complete control is vested in the 1st Party.

(21) That, in view of the Directive Principles of State Policy under the Constitution of India, the responsibility is

cast on the 1st party not to indulge in any discrimination and to give fair service conditions and fair wages to all the workmen without discrimination.

(22) That, the concerned workmen have worked for last several years without any break and without any interruption in the employment with the 1st Party. All the concerned workmen have put in uninterrupted service of number of years continuously in the employment with the 1st Party and as such, each one of them is entitled to the benefits of permanency in the employment of the 1st Party employer with other consequential benefits and deprived of the same by the Management of the 1st Party is unconstitutional, unjustified and illegal.

(23) That upon lifting of the veil, it can be seen that there is direct employer employee relationship between the 1st Party and the concerned workmen and the so called contractors who are brought in picture is nothing but a camouflage.

(24) The engagement of the workmen on large scale under the label of contract labours is victimization of the concerned workmen and it is malafied action on the part of the 1st party, in as much as the 1st Party employer is fully aware that all the concerned workmen are performing the duties of regular, permanent perennial, important and essential nature.

(25) That, the arrangement arrived at between the 1st Party and the so called contractors is malafied act, in as much as it is aimed at depriving the concerned workmen of the benefits of permanency and other statutory benefits;

(26) That, the so called contractors are also not registered under the provisions of Contract Labour (Regulations & Abolition) Act. These so called contractors also do not have valid and proper licenses for recruitment and engagement of contract labour;

(27) That the so called contractors themselves have no experience or knowledge of skill or professional qualifications, etc. required to carry out the jobs and to meet the requirements of the 1st Party. On the other hand the concerned workmen are having necessary skills, experience, qualifications, etc. to perform their respective duties.

(28) That, the workmen covered under the present reference are deprived of their welfare statutory benefits which are permissible under the provisions governing various labour legislations such as Employees' Provident Fund and Misc. Provisions Act, 1952, B.S.I. Act, Payment of Bonus Act, and other welfare statutes, as well as, in view of the Directive Principles of State Policy

(29) Union filed a petition that the two workmen by name S/Shri Karve Gopal Mahesh and C. Vedamani are working as Seweremen. These Seweremen are deputed in all the three shifts around the clock for maintenance of choke up work. They have to attend on a daily basis at

least ten times a day. The work of maintenance of toilet lines, water coolers, water supply points, kitchen and pantry and pipes to shift chute etc. At ground floor, Mezzanine floor, first floor and second floor and terrace in terminal building and surroundings, the chamber cleaning work is done on monthly basis. The drainage line is cleaned by sewer men by entering into the main line once every month, water main line and toilet main line are cleaned twice every month. The Sewer men have to bodily enter the main sewer line to clean and clear the line. The work of the Sewer men is crucial to the image of the Airports and hence they are deputed round the clock. Sewer men who are permanent staff do the similar work in Terminal IIA at Sahar and Terminal IB at Santacruz Airport and residential colony at AAL(UDA) for doing day to day maintenance of the colony. All the Sewer men work in three shifts in the Airport building, except those at residential colony, who work in one shift.

(30) The Union further submitted that, the appropriate Government i.e. the Central Government, Ministry of Labour vide their letter dated 16th November, 1999 has inter alia directed that the wages consisting of basic pay plus Dearness Allowance should be paid to the workmen concerned, at the rate applicable to the lowest category of regular employee in the respective establishments. However, though the said order has not been set aside or stayed by any High Courts till date, the 1st Party has not paid the basic pay plus dearness allowance at the rate applicable to the lowest category of regular employees, to the concerned workmen. In fact in the order dated 8th February, 2000 in Writ Petition No.78 of 2000, the Hon'ble Bombay High Court clearly directed Rule. The Respondents waive service. Hearing of the petition expedited. There will be an interim order in terms of prayer clause (C) and (d) with a rider that wages consisting of basic plus Dearness Allowance paid to the lowest categories or Regular employees, will be paid to the Employees concerned. The 1st party filed Notice of motion for variation of this order directing the payment equal to that paid to the lowest category of permanent workers. It is submitted that, the Hon'ble High Court by an order dated 2nd May, 2000 was pleased to dismiss the Notice of Motion and not vary the said order. The 1st Party, thereafter took out another notice of motion praying for the orders dated 8th February, 2000 be set aside. This Notice of Motion was not pressed by the 1st Party at the time of final hearing of Writ Petition and the Hon'ble High Court while disposing of the Writ Petition was pleased to direct that the interim relief would continue till four weeks after the disposal of the interim relief application by this Hon'ble Tribunal. Thus protecting the rights of the workers the Workers in the present Reference are thus entitled to receive payment by way of interim relief the wages equal; to the basic and D.A. payable to the regular employees.

(31) The Union submitted that in view of the orders dated 16th December, 2002 passed by the Division Bench

of Mumbai High Court in Writ Petition No.78 of 2000 protection is granted to the present set of workers and if the same is continued, it will not cause any prejudice or hardship to the 1st Party, in any manner whatsoever. Similarly the concerned workmen have been performing their duties peacefully, normally and diligently to meet the requirements expected on them by the 1st Party and that the Union is also filing an application for interim reliefs awarded by order dated 16th December, 2002. The Union, therefore, prayed for a declaration that the contract between the 1st Party and the respective Contractors is sham and bogus and are camouflage to deprive the concerned workmen of the benefits available to the permanent workmen employed by 1st Party, and to declare that concerned Workmen are direct employees of the 1st Party also with directions to the 1st Party to give status, benefits and privileges of permanent workmen, to all the concerned workmen involved in the present Reference from the date each one of them has completed continuous service of 240 days at par with the permanent workmen and to pay them the arrears arising there from, with 18% compound interest and for payment of wages and consequential benefits, equal wages for equal work and also prayed for interim reliefs.

(32) This is disputed by the 1st Party by filing Written Statement at Exhibit M 1/11 making out the case that, Reference in the present form is manifestly erroneous and without jurisdiction and as such liable to be quashed since the Government of India, Ministry of Labour has made a Reference to this Tribunal for adjudication reciting in the order of reference that, the Central Government was of the opinion that an industrial dispute existed between 1st Party and the 2nd Party in respect of the matters specified in the schedule annexed therewith. It is further recited therein that, the Hon'ble High Court of Judicature at Mumbai on Writ Petition No.78 of 2000 directed the Government for Reference of the abovesaid industrial dispute for adjudication. It is, therefore, submitted by the 1st Party that, the order of reference was made only at the directions of the Hon'ble High Court of Bombay and not in exercise of the powers conferred on the appropriate Government to refer the industrial dispute originated from the provisions of Section 10(1) of the Industrial Disputes Act, 1947. The said power has to be exercised by the appropriate Government, only when it is satisfied on the basis of the material on record; forming an opinion, that, the industrial dispute existed or apprehended before the order of reference is made for adjudication. The appropriate Government has to form an opinion as to the factual existence of industrial dispute. As a preliminary step to discharge of its functions in this regard. It is also contended that, the satisfaction of the existence of the industrial dispute is a condition precedent; before making the order of reference, the reference that has been made by the Central Government at the direction of the Bombay High Court issued in the Writ Petition No.78 of 2000; without forming an independent opinion by it in respect of the existence of the Industrial

Disputes as required under Section 10(1) of the Industrial Disputes Act, 1947. It is also contended by the 1st Party that, the so called industrial dispute was raised by the 2nd Party for the first time before the Hon'ble High Court under Article 226 of the Constitution of India and there was no any demand raised against the Management at any point of time before any authority. There was no any conciliation proceedings initiated as required under Section 12 of the Industrial Disputes Act, 1947. It is contended that, the Central Government had no any material before it to satisfy that the industrial dispute existed between the parties to exercise its power under Section 10(1) of the Industrial Disputes Act, 1947. The discretion of Government to make the order of reference is dependent on its satisfaction. The opinion formed by the Government of India on the basis of the directions issued by the High Court was not conclusive; as the same was not the opinion, as contemplated under Section 10(1) of the Industrial Disputes Act, 1947 and that, there was no material before the Central Government for coming to the conclusion that, the industrial dispute existed, which is a condition precedent in forming of the opinion and it has acted in clear contravention of the provisions of Section 10(1) of the Industrial Disputes Act, 1947, hereinafter referred to as 'the said Act', without application of its mind and to form the necessary opinion in respect of the existence of the industrial dispute. It is also contended by the 1st Party that, the reference is bad for non-joinder of the necessary parties and that the same be rejected on the said ground alone since the Union has time and again referred to the contractors engaged by the 1st Party from time to time attributing different kind of adjectives to them but they have not impleaded them as parties in the reference though some of the Contractors were impleaded in the Writ Petition Nos. 621 of 98, 1683 of 1999 and 78 of 2000, hence they were proper and necessary parties in this order of reference also. It is also contended by the 1st Party that, the Union cannot represent the concerned workmen as they are not the workmen of the 1st Party and that the said workers neither can enroll themselves as the members of the Union nor Union can admit them as its members and the 2nd Party, Union is not meant for them and the 1st Party is not aware whether the said workers in fact have been the members of the 2nd Party, Union, since November, 1999 till today and put the 2nd Party to the strict proof thereof. 1st Party contended that, there is no privity of contract of employment between it and the concerned workmen as provided under Section 2(s) of the Industrial Disputes Act, 1947. It is contended by the 1st Party that, essential condition of a person being workman within the terms of the definition is that he should be employed to do the work in that industry and that there should be an employment of his by the employer and that cannot be the relationship between the employer and his as between employer and employee. Unless the person is employed there cannot be question of his being a 'workman' within the definition of the term as stated in

the Act. When the contract system is in vogue, the persons employed by the contractors are not the workmen of the 1st Party. It is further contended that, the industrial dispute within the meaning of Section 2(k) of the Industrial Disputes Act, 1947 must be between the employers and the workmen as defined under Section 2(s) of the said Act. Since the concerned workmen are not their workmen, as defined under Section 2(s) of the said Act they have no locus-standi to raise the industrial dispute under Section 2(k) of the said Act, through the Union. The workmen of the 1st Party may raise the dispute through their Union for their employment or non employment or the terms of employment or with the conditions of labour, provided the workmen must have direct and substantial interest in their employment, non-employment, the terms of employment or with the conditions of labour. The definition of Section 2(k) of the said Act has to be read in the context of the subject matter and the scheme of the said Act. The said Act is primarily meant for regulating the relations of the employers and their workmen as defined under Section 2(s) of the said Act. The said Act avowedly gives a restricted meaning to the word 'workman' and even excludes employees provided in Section 2(s)(iii) of the Act. The said Act draws the distinction between the workmen as such and the managerial, supervisory and administrative staff. Thus, the Act is primarily meant for regulating the relations of the employers and their workmen and almost all the provisions of the Act are intended to confer benefits on that class of persons, who generally answer to the definition of the word 'workman' as defined under Section 2(s) of the said Act. It is further contended that, having regard to the scheme and the objects of the "Act" and its other provisions, the definition of Section 2(k) of the Act has to be read. The definition clause falls into three parts (i) there must be a dispute or difference (ii) the dispute or difference must be between the employer and their workmen as defined under Section 2(s) of the said Act, as the 1st Party is not concerned with rest of the parties i.e. employers and employees or workmen and workmen, (iii) the dispute or difference must be connected with the employment or non-employment or the terms of employment or with the conditions of labour of any person. It is contended that, the first two parts obviously do not apply to the facts of the case as there cannot be a real or substantial dispute between the 1st Party and the concerned workmen. The third part of the said definition may relate to any of two matters i.e. (i) employment or non employment and (ii) terms of employment or conditions of labour of any person. The first two parts of the definition of Section 2(k) of the said Act are not applicable to constitute the industrial dispute; the reasons of which have been averred hereinbefore. So far as the third part of the definition is concerned, the workmen of the Authority through their Union may espouse their cause; provided they must have direct and substantial interest in them. In the absence of such interest among the employees of the 1st party, the dispute cannot be said to

be real dispute between the parties. Whereas the workmen of the company raise a dispute as against their employer, the person regarding whose employment, non-employment, terms of employment or conditions of labour, the dispute is raised, need not be a workman within the meaning of Section 2(s) of the Act, but must be one in whose employment, non-employment, terms of employment or conditions of labour, the workman as a class must have direct and substantial interest, which did not exit when the alleged industrial dispute was espoused by the Union. 1st Party further submitted that, when the validity of the reference made under Section 2(k) of the said Act is challenged it has to be established by the Union that the industrial dispute espoused by it had the support of a substantial Section of the workmen employed in the establishment. It must, therefore, show that the substantial number of such workmen employed in the establishment participated in or acted together and arrived at an understanding either by a resolution or by any other means and collectively supported the said industrial dispute. It submitted that, no such exercise was made before espousing the cause of the concerned workmen, hence the said reference is bad in law. 1st Party, therefore, prayed that the reference be rejected.

(33) It is further contended that, the 2nd Party, Union filed Writ Petition No.621 of 1998 covering the contract labourers as mentioned at pages 16 and 17 of the Statement of Claim praying for orders (a) to continue the workmen concerned in the petition in their present work as long as work exist and to restrain the Respondents from recruiting fresh workmen in the place of the present workmen, (b) to direct the Respondents Nos.3 and 4 to investigate under Section 10 of the Contract Labour Act and on being satisfied, with the condition therein, to direct the Respondents to forthwith regularize the workmen concerned with the petition as employees of Respondents No.1, (c) to direct the respondents to treat the workmen concerned in the petition on par with the permanent workmen (d) to restrain the Respondents from changing the status-quo in respect of the concerned workmen in any manner whatsoever and pending hearing and final disposal of the petition, to grant interim orders in terms of prayers (a), (b), (c) and (d) above as prayed for at clauses (c), (f), (g) and (h) respectively. The Hon'ble High Court at the admission stage on 27-4-1998 and 6-5-1998 passed ad interim stage on 27-4-1998 and 6-5-1998 passed ad interim orders in terms of prayer clause (e) i.e. to continue workmen concerned in the petition and restrain the 1st Party from recruiting fresh workmen. Thereafter an order dated 22-7-1998 was passed; disposing of the said petition in terms of the Minutes of Order i.e. (a) the petitioner (i.e.) Union shall apply to the Contract Labour Board and Union of India for investigation under Section 10 of the Contract Labour (Regulation and Abolition) Act within 2 weeks from order, praying that contract labour system be abolished; who shall investigate in accordance with the law and make a final order within 6 months from

the date of the order (b) the Contract Labour Board and the Union of India shall hear the parties and consider all contentions of the parties (c) until receipt of order of the Contract Labour Board and Union of India and for 2 weeks thereafter, the 1st Party shall continue employing workmen concerned in their present work and respondents were restrained from recruiting fresh workmen in place of the present workmen (d) the 1st party may take disciplinary action for proved misconduct (e) order shall not cover the workmen listed at Sr.Nos.10, 20, 25, 26 and 27 of the Annexure 'A'. (f) Respondent No.1 may issue an advertisement and recruit permanent workmen for work done by the contract workers, who will be at liberty to respond to the said advertisement. The appointment of such workmen shall be however subject to the order of the Board (g) Petition was disposed off in terms of the above (h) All contentions were kept open. The said Writ Petition did not cover the contract labourers numbering 15, mentioned at page 3 of the statement of claim. 1st Party further contended that six contract labourers who worked under another contractor viz. M/s. J.P. and Brothers, Suvarna Kalash Co operative Society Ltd. Andheri, Mumbai, who was entrusted with the work of maintenance of civil work at Terminal 2B for the period from 17-09-1998 to 30-09-1999, filed the Writ Petition No.1683 of 1999 on 2-7-99 after disposal of Writ Petition No. 621 of 1998. However, out of the said six, the contract labourers at Serial Nos. 14, 16 to 18 (i.e. total 4) are covered in the order of reference dated 20-3-2003 vide 17 of the statement of claim. They are at present deployed at Terminal 2C. The prayers in the said Writ petition were to pass the orders (a) to restrain the respondents No. 1 and 4 from terminating the services of the petitioners till the decision of the Central Government on the question of abolition of contract labour in the jobs carried out by the petitioners (and) for a period of 6 weeks thereafter (b) to restrain the Respondents Nos. 1 and 4 from terminating the services of the petitioners, pending hearing and final disposal of the petition, (c) to direct the Respondents No.1 to pay to the Petitioners wages equal to the wages drawn by the direct employees doing the same or similar work, pending hearing and final disposal of the petition and (e) (?) ad-interim and interim reliefs; in terms of prayers (c) and d(f) above. The Hon'ble Bombay High Court passed the order dated 29-7-1999 at the admission stage to the effect:

"the interim relief granted in Writ Petition No.621 of 1998 shall equally apply to the six contract workmen whose names are indicated at Exhibit "A" to Writ Petition No.1683 of 1999."

1st Party further contended that, the final order dated 16-12-2002 was passed by the "Hon'ble High Court directing the Central Government to make a reference of the demands specified therein, to the Industrial Tribunal for adjudication. 1st Party further contended that, it is unexplained by the Government of India, Ministry of Labour, as to how it could

club the said contract labourers covered in Writ Petition No. 1683 of 1999 for the common order of reference dated 20-3-2003 with the contract labours covered in Writ Petition No. 78 of 2000. The former Writ Petition was filed by the contract labourers in the capacity of the individuals, whereas the latter was filed by the Union in the respective capacity on behalf of the contract labourers covered in the Writ Petition No. 78 of 2000. The Union cannot represent the contract labourers covered in Writ Petition No. 1683 of 1999; and it did not represent them at any point of time till the order of reference dated 20-3-2003 was made by the Government of India, Ministry of Labour. The order of reference dated 20-3-2003, covering the contract labourers mentioned at Serial Nos. 14, 16 to 18 therein is bad in law to that extent. It is, therefore, prayed that the order of reference dated 20-3-2003, covering the contract labourers covered at Sr. Nos. 14, 16 to 18, numbering four, may be rejected to that extent. It is also contended by the 1st party that the contract labourers at Sr. No. 1 to 15 of the order of reference and shown at page 3 of the statement of claim; deployed at Terminal 1A were for the first time covered in Writ Petition No. 78 of 2000. The contract labourers shown at page 16 and 17 of the statement of claim, numbering 18 are deployed at Terminal 2C and the contract labourers at Sr. No. 1 and 2 at page 38 of the statement of claim, are deployed at external area (CMD) and that, the said contract labourers were already covered in the previous W.P. No. 621 filed by the 2nd Party and 1683 of 1999 filed by the contract labourers and lastly covered in Writ Petition No. 78 of 2000. The 1st Party submitted that in Writ Petition No. 78 of 2000 the 2nd Party made various prayers; such as (a) to quash and set aside the order dated 16-11-1999 of the Central Government, (b) to direct the Respondent No. 1 (i.e. the Authority) to absorb the workers listed as its direct employees (c) to restrain the Respondents Nos. 1 and 5 to 8 (i.e. the Authority and the contractors) from terminating services of the said workmen (d) pending hearing and final disposal of the petition, to direct Respondent No. 1 to pay said workers wages equal to the wages drawn by their regular employees doing same or similar jobs (e) ad-interim and interim reliefs in terms of prayers (a) to (d), wherein an order dated 8-2-2000 was passed by the High Court to the effect

"ad-interim order in terms of prayer clauses (c) and (d) with a rider that the wages constituting of basic pay plus dearness allowance paid to the lowest category of regular employees, will be paid to the employees concerned."

It is contended by the 1st Party that, there is no any averment in any of the said Writ petitions, nor even in the last writ petition filed by the Union, as well as by the contract labourers themselves in the Hon'ble High Court to the effect that, the contract was sham and bogus and was a camouflage to deprive the contract labourers concerned; in the said petition, of benefits available to its permanent workmen. The allegations made in this regard by the Union

in the statement of claim are nothing but an after-thought and are made to fine tune with the terms of reference made by the Government of India, Ministry of Labour, pursuant to the directions issued by the Hon'ble High Court of Bombay in its order dated 16-12-2002 in Writ Petition No. 78 of 2000. It is also submitted that, the Hon'ble High Court while passing the order at clause (i) of paragraph 4(1) of the said order was influenced by the order passed by the High Court in Writ Petition No. 917 of 1995 and others and the observations made by the Supreme Court in Steel Authority of India Ltd. and ors. vs National Union Water Front Workers and others 2001 AIR SCW p.3574 = 2001 III CLR p.349 without having any reference in the pleadings of the Union in this regard in Writ petition. It is further submitted by the 1st Party that, according to the order dated 22-7-1998 passed by the Hon'ble High Court in terms of the minutes of the Order in Writ Petition No. 621 of 1998 the 2nd Party, Union, applied to the Union of India and the Central Advisory Contract Labour Board (hereinafter referred to as the 'Board') for investigation of the said matter in accordance with law. The parties were heard and contentions of the concerned parties were considered and the circular dated 16-11-1999 was issued by the Government of India, Ministry of Labour, New Delhi deciding not to prohibit the employment of contract labour inter alia in (i) plumbing (ii) carpentry, (iii) masonry work and (iv) pump operation and pump repairing, provided that the wages (consisting of basic pay plus dearness allowance) paid to the lowest category of regular employees in the respective establishments are paid to the contract labour. The Union being aggrieved by the said circular deciding not to prohibit the employment of contract labourers in the said works and hence it filed a writ petition being No. 78 of 2000 praying for various reliefs averred above, one of which was to quash and set aside the said circular (Notification) dated 16-11-1999 of the Government of India. The Hon'ble High Court however by its order dated 16-12-2002 directed the respondents to abide by the interim relief granted by it, if any and further directed the Government of India to make a reference of the demand specified therein, to the Industrial Tribunal for adjudication and accordingly the impugned order of reference dated 20-3-2003 was made to this Tribunal for adjudication. 1st Party further submitted that, the industrial dispute can be raised by the Union, only on issuance of prohibition notification under Section 10(1) of the Central Labour Act: prohibiting employment of contract labour or otherwise; as held by the Apex Court in the case of Steel Authority of India (supra). There was, however, decision of the Government of India not to prohibit employment of the contract labour in the said works. 1st Party submits that, it was aggrieved by a part of the said circular, providing for the wages (consisting of basic pay and dearness allowances) paid to the lowest category of regular employees in the respective establishment are paid to the contract labourers and hence the Authority filed a Writ Petition No. 6540 of 1999, the Hon'ble High Court,

Delhi by its order dated 22-11-2001 gave the liberty to the parties to approach the Central Government, for reconsideration of the matter in view of the subsequent decision of the Apex Court in Steel Authority of India (supra). 1st Party contended that, a representation dated 27-3-2002 was submitted to the Joint Secretary, Ministry of Civil Aviation, New Delhi 110 003, who in turn issued an office memorandum dated 3-7-2002 to the Ministry of Labour, Government of India, New Delhi; for review of the circular dated 16-11-1999 relating to the wages payable to the contract labourers. 1st Party further contended that, the Board recommended to the Government of India that a part of its recommendations relating to the wages payable to the contract labourers indicated in the circular dated 16-11-1999 be treated as withdrawn; as it had no powers to make such recommendations under the provisions of the Contract Labour Act and Central Rules. The note dated 24-2-2003 in this regard was issued by the Under Secretary to the Government of India, Ministry of Labour, New Delhi to the Chief Labour Commissioner (c), New Delhi, the copy of which was sent to Mr. Colin Gonsales, Advocate, thus the circular dated 16-11-1999 based on the recommendations made by the Board, relating to the wages payable to the contract labour has no any force of law. It is further contended by the 1st party that, Air Port Employees Federation of India (AEFI), Kerala, filed a Letters Patent Appeal in the Hon'ble High Court of Delhi against the said judgment and order dated 22-11-2001 against the order of the Single Judge which was numbered as LP A No.530 of 2002 in CPW No.6540 of 1999 and by order dated 24-7-2002 the Division Bench dismissed the appeal observing that there were no merits in it. 1st Party submitted that, Mr. Sivaraman and another filed a special leave Petition in the Apex Court against the said judgment and order dated 24-7-2002 which was dismissed by its order dated 31-1-2003. It is, therefore, contended by the 1st Party that it is not for the Hon'ble Court to enquire into the question and decide whether the employment of contract labourers in any process, operation or other work in any establishment should be abolished or not. It is the matter for the decision by the Government, after considering the matter under Section 10 of the Contract Labour Act, which was done by the Government of India as averred hereinabove. It is, therefore, further contended by the 1st party that, this Tribunal has no authority or jurisdiction to adjudicate the issue whether the contract between it and the contractor/s was sham and bogus and was a camouflage to deprive the workers concerned in the petition, of benefits available to its permanent workmen since this Tribunal has no jurisdiction or authority to adjudicate the said issue and the other issues which are incidental also cannot be adjudicated, hence, it prayed that the order of Reference dated 20-3-2003 be rejected on this ground.

(34) It is also contended by the 1st Party that, the preliminary issues raised by it goes to the root of the matter and relate to the jurisdiction of the Government of India,

Ministry of Labour, New Delhi to make the order of reference dated 20-3-2003 to this Tribunal and its jurisdiction to adjudicate the Reference on merits.

(35) 1st Party without prejudice to its aforesaid contentions and preliminary objections in reply to the Statement of Claims submitted that, by virtue of the order of reference dated 20-3-2003, the alleged industrial dispute has been referred for adjudication of this Tribunal concerning 15 contract labourers at Terminal 1A employed by the Contractors VIZ. M/s. J.P. Brothers, M/s. Samson Constructions, M/s. Vini Enterprises, M/s. Profesco; and for 18 Contract labourers at Terminal 2C employed by the Contractors viz. M/s. Rojiwadia Constructions, M/s. Profesco; M/s. D'Souza Construction Co., M/s. Intercon, and for 2 contract employees at external area of Terminal 2 employed by the Contractors viz. (I) M/s. Rolex Construction Co., M/s. Reena Enterprises, M/s. Intercon; M/s. D'Souza Construction Co.. It is further contended by the 1st Party that the Union cannot represent the said contract employees as they are not the workmen of the 1st Party and that, neither the contract employees can enroll themselves as the members of the Union nor the Union can admit them as its members and that the Union is put to the strict proof to show that the concerned workmen are the members of the said Union. It is also contended by the 1st Party that, the Government of India, Ministry of Labour, did not act independently in forming an opinion, as required under Section 10 of the Industrial Disputes Act, 1947 that the industrial dispute existed for being referred to this Tribunal for adjudication since it made the reference at the direction given by the Hon'ble High Court in its order dated 16-12-2002 in Writ Petition No.78 of 2000. The discretion of Government to make the order of reference is dependent on its satisfaction that the industrial dispute either exists or apprehended. The opinion formed by the Government of India on the basis of the directions passed by the High Court was not conclusive. The alleged industrial dispute was raised by the Union for the first time before the Hon'ble High Court of Bombay under Article 226 of the Constitution of India in the year 1998. There was no any demand raised against the 1st Party at any point of time. There was no any conciliation proceedings initiated as required under Section 12 of the said Act. Thus, there was no material before the Central Government for coming to the conclusion that the industrial dispute existed which is a condition precedent in forming of the opinion. 1st party submitted that, the Central Government had acted in clear contravention of the provision of Section 10(1) of the Act and had taken the decision, only on the basis of directions of the Hon'ble Bombay High Court without having any material before it to apply its mind and form the opinion in respect of the existence of the industrial dispute. Hence, the said order of reference dated 20-3-2003 is manifestly erroneous and without jurisdiction and as such liable to be rejected on this ground alone. 1st Party further contended that there is no definition of "Traffic services" as

by the 2nd Party but it is 'air traffic service'. Chapter III deals with the functions of the 1st Party and not definition of the 1st Party as averred by the 2nd Party. There are two divisions of the 1st Party viz. (i) International Airports Division and (ii) National Airports Division. The International Airports Division manages 5 international airports, whereas National Airports Division manages 19 airports across the country. The man power required by it is consisting of permanent, temporary and contractual. Though the order of reference dated 20-3-2003 covers 35 contract employees Annexure I annexed to the statement of claim provides the list of 33 contract labourers. 1st Party submitted that the details of the contract labourers in respect of their date of joining, date of birth, etc. are not required to be maintained if hence the same are not available with it. It is contended that the concerned labourers are working on the civil maintenance work which is not an integral part of the regular, permanent and perennial activities of the 1st party as the civil maintenance work is necessary for up-keeping and maintenance of buildings and it manages the airports, the civil enclaves and the aeronautical communication stations among others. The duties performed by the contract labourers have nothing to do directly with the functioning of the 1st Party and without prejudice to the said averments, 1st party submitted that, this Tribunal cannot decide whether the work carried out by the contract labourers is incidental to or necessary for its main activities since it is within the domain of the Central Government. The allegations, therefore, that the duties carried out by the concerned workmen were of such nature that the same had never been severable from the main activities carried out by the employees at various airports in India are not true. 1st Party denied that, the services rendered by the workers, irrespective of their category, were of important nature because of the continuous flow of passengers and cargo, as there is no nexus between the two. 1st Party further submitted that, the contract labourers carry out the work Terminal IA and the instructions of their employers and do not come in contact with the international passengers and hence the allegations made that as far as international passengers were concerned, the nature of duties entrusted to all the workers, including the workers concerned was of vital importance; as the international passengers carry impression about our country are not true. 1st party further submitted that, the permanent workmen were not appointed for carrying on civil maintenance work, since the inception of operation of Terminal IA, as there is no sanction for creation of the posts for appointment of the regular workmen as the work is not of a perennial and permanent nature. The persons working as plumbers, carpenters, masons, etc. are not technically qualified persons but by virtue of experience, they have acquired the routine knowledge of the trade. The said contract labourers were appointed since November, 1999 and thereafter, except one and have been in continuous service by virtue of orders passed by the

Hon'ble Bombay High Court from time to time and last being dated 16-12-2002. It is contended that, at present 13 contract labourers are deployed at Terminal IA for carrying on civil maintenance work and one is/was in the employment of the 1st Party much less S/Shri Nandlal Pillai and Prahalad Mane were in its employment at any point of time. Mr. Nandgopal Pillai was reported removed from the service by M/s. J.P. Brothers; whereas Mr. Prahalad Mane remained absent without any permission of the contractor since 16-12-2002. Mr. Balakrishnan has not reportedly been attending on duty since last three years without permission of the contractor. The contract labourers carry out the routine work of plumbing, carpentry and masonry. They are not technically qualified in their trade to do the said work; which they do under the instructions of the contractor; as and when the complaints are received from the concerned section. The allegation, therefore, made that their work was of a continuous nature is not true and that, all the tools, instruments and plants etc. required by the respective category of the contract labourers are provided by the contractor and the materials required for carrying out the respective jobs are supplied by the department. 1st Party also submitted that, the contractor give instructions to the contract labourers on the basis of the complaints received from the concerned sections and the contractor or his supervisor supervises and controls their work and that since the said type of work being carried out by the contract labourers 1st Party cannot engage Junior Engineer/Sr. Superintendent/Assistant Manager/Manager, Engineer and Asstt. General Manager, formerly known as Executive Engineer. Officers of the 1st Party do not give instructions directly to the contract labourers and or supervise their work as alleged nor the offices named by Union can give instructions to the lower categories of the contract labourers and supervise their work. It is further contended by the 1st party that the plumber alongwith his helper carry out the contractual jobs in all the three shifts and carpenter and mason alongwith their helpers work only in the general shift. The entry passes are issued by the Security agency i.e. Central Industrial Security Force, which is approved by the Bureau of Civil Aviation Security and not by the 1st Party as alleged. 1st Party also contended that, the contractor maintains the Muster Roll of the contract labourers. The Attendance Register for contract labourers is not kept in the offices of the 1st Party, hence, the question of countersigning the register for the purpose of authentication by the Junior Engineer does not arise and it is not true that all the workmen employed at Terminal IA were required to sign attendance register kept in the respective offices and those registers were/are countersigned for the purpose of authentication by the Junior Engineer. 1st Party submits that it, however, maintains the Muster Book for the purpose of effecting payment to the contractor. 1st Party submits that, neither the place of work, nor the location of the person working is material for determining the relationship.

It denies that, the attendance is also marked by the representative of the Engineer-in-charge. It is also denied that, none of the representative of the so-called contractor was present at the premises to oversee the work of the workers. It also denied that the muster rolls of the workers were maintained by the Junior Engineer/Sr. Superintendent of Terminal 1A, who certified the register under his signature and signed each day's notes of the general shift and the shifts of the staff are without any basis and that since the Muster roll is not being maintained by the 1st Party the question of keeping the same in custody by the Junior Engineer/Sr. Superintendent does not arise. 1st Party further contended that, no comparison can be made in respect of work carried out at Terminal 1A with that carried on at Terminal 2C; as the nature of work carried on by them varied from complaint to complaint and without prejudice to the said contentions 1st party submitted that, the question whether the work done by the contract labourers is the same, similar or identical work as that done by the permanent workmen employed by it is a matter to be decided by the Dy. Chief Labour Commissioner (C) under the Central Rules and hence this Tribunal has no jurisdiction to decide the said aspect of the dispute. It contends that the new Terminal was commissioned in the year 1992 and not in 1986 as averred by the Union. 1st Party denied that it deliberately and intentionally did not sanction the appointments of permanent workmen for the maintenance of that terminal as alleged. It submitted that, there is no sanction by the Authority for creation of the permanent posts to carry on civil maintenance work at Terminal 1A, as the work is not of a perennial and permanent nature and hence the said work was entrusted to the contractors from time to time by inviting tenders. The said tenders were scrutinized by a Committee and one of the tenders was accepted, after following the rules and regulations for the same who were required to execute an agreement. 1st Party obtained the Certificate of Registration, whereas the Contractors obtained the licences under the Contract Labour Act. 1st Party submitted that the 2nd Party Union/concerned workmen should have approached the contractors from time to time for various benefits due and payable under the labour law. It is therefore, denied that, 1st Party decided to employ workers through sham and bogus contractors with a view to exploit those workmen and with a view to deny them the benefits, due and payable under the various industrial laws as alleged. 1st Parties denies that it adopted any modus operandi as contended by the 2nd Party, it appointed the contractor in accordance with the law to carry on the contractual work who was supposed to give the statutory benefits to the contract labourers. 1st Party is not aware whether any demands were raised by the 2nd Party representing the concerned labourers, claiming benefits such as Provident Fund, ESI etc. against the contracts and out come of such demands. 1st Party denied that the contract labourers can claim pay parity and other benefits available to its permanent workmen.

Difference between the contract labourers and the permanent workmen is bound to be there, as the scales of pay and other benefits are attached to the definite posts but the contract labourers hold no post. Equal pay for equal work is a concept which for the purpose of implementation requires complete and wholesome equality between two groups. The regular workmen e.g. plumber, mason, carpenter, sewer, beldar etc. have to fulfil the requirements of the job specifications before being appointed in a specific post. 1st Party therefore denied that those workers were in fact, entitled to receive the same, similar and identical benefits without discrimination between them and the other permanent workers from the dates of respective appointments because based on the principle and the doctrine of 'equal pay for equal work' those workers had/have statutory right of being at par with the permanent workers in the matter of emoluments and other terms and conditions of employment and that, the same was denied to them by artificial means and by subterfuge the conspectus of employment and that, in other words the artificial sham and bogus contractors were introduced by the 1st party with a view to deprive the concerned workmen of their statutory benefits under the various industrial laws are not true for the reasons averred herein a before. 1st Party submitted that the question whether contract labourers are entitled to receive the same, similar and identical benefits given to its permanent workmen and whether they have to be placed at par with the permanent workmen in the matters of emoluments and other terms and conditions of employment have to be decided by the Deputy Chief Commissioner of Labour (C), as provided under Central Rules and hence, this Tribunal has no jurisdiction to decide the said aspect of the dispute. 1st Party contended that the said concerned workmen were not recruited through Junior Engineer, Asstt. Engineer and Executive Engineer but were recruited by the contractors. 1st Party, therefore, denied any modus operandi was adopted while recruiting these concerned workmen through Contractors. 1st Party further contended that the illustrations of the categories of the posts allegedly appointed through Junior Engineer, Asstt. Engineer and Executive Engineer has been fabricated by the 2nd Party Union since the concerned workmen contract labourers are nothing but figment of imagination. The persons holding the posts of the said status cannot and did not canvass for appointment of the said categories of the contract labourers with the Contractors, which is derogatory to their status. 1st denied the allegations that the carpenters were appointed through J.E., Asstt. Engineer and that a beldar was appointed through J.E., and Assistant Engineer and Executive Engineer apart from other instances as alleged by the Union. 1st Party further submitted that the 2nd Party has simply given the list of contractors without specifying the period for which they were appointed to carry out the jobs assigned to them and that, the duration of the contract must be for a year or two and

as and when the period was over, the new contractor in place of old one was deployed. It is also denied by the 1st party that, the so-called contractors whose names went on changing were merely name-lenders. It is submitted that the contractors were appointed after following the procedure evolved by it as stated hereinabove. The 2nd Party has not impleaded the contractors in the reference, hence, it cannot cast aspersion or level any allegations on them behind their back and who are not in a position to rebut the same. The basis on which the 2nd Party has averred that, the so called parties or so called contractors had never obtained any registration as commercial establishment under the Shops & Establishments Act has not been specified in the statement of claim. 1st Party submits that the question of obtaining a registration certificate under the Factories Act did not arise as the contractors did not run any factory. Hence the allegations made that those parties were not genuine parties and those names were nothing but a subterfuge and camouflage and that the so called parties or so-called contractors had never obtained any registration as commercial establishment under the Shops and Establishment Act or under the Factories Act as a factory, are without any basis. 1st Party reiterated that, the Contractors are for a specific period and before the period is over fresh tenders are invited. Contractors fulfilling the eligibility criteria as per the notice inviting tenders are only issued tender documents in the specified tendering system and the contract is awarded after following the rules and regulations framed in this regard. In the said process, the contractors are bound to change and the old contractor may or may not take interest in responding to the advertisement and in his place another contractor is appointed, whose quotation is acceptable and technically feasible. Hence, the allegations made that many a times old so called contractors went away and in their place new contractors were introduced by the 1st Party are without any basis and the same are not true. 1st Party admitted that these contractors were changed but the contract documents, however, remained the same by virtue of orders passed by the Hon'ble Bombay High Court in various Writ Petitions referred above and the concerned workmen have been carrying out the work for the last few years, which has been of intermittent nature. 1st Party contended that, it merely maintained records and issued a number of certificates of contract labourers, issuing them to the contractor for the purpose of effecting payment to the contractor and it denied the allegations that it was maintaining documentation in respect of its contract labour workmen and that, those documents clearly indicated that there was direct supervision and control on the workers, the duties carried out by the concerned workmen were of routine nature and the workers were performing the duties under the supervision of the officers of the 1st party. The duties and responsibilities of the Sr. Superintendent are of onerous nature and it is derogatory to the status of the said post to oversee the work of contract labourers which is of routine nature. 1st Party submits that so far the nature of supervision and

control is concerned, the work of permanent workers is supervised and controlled by the officers of the department, whereas that of the concerned contract labourers either by the supervisor/representative or by the contractor himself. The allegations therefore made that it was therefore crystal clear that as far as the nature of supervision and control was concerned, there had been never any difference of whatsoever nature between the permanent workers and the concerned workers are not borne out by fact and the same are not true. 1st Party further submitted that the recruitment of the regular workmen made by it is in accordance with the Service Regulations whereas the contractors recruit the contract labourers, who do not pass through the stringent test. The allegations, therefore made that as far as nature of duties of those two sets of workmen was concerned, there also had absolutely been no difference of whatsoever nature are not true. It submitted that all the departments are integral part of its establishment and all are equally important from the management point of view. The allegation, therefore, that it was the said department (Civil Maintenance Department) which itself was an integral part of the establishment of 1st Party was one of the most important Departments and that the work of other departments was carried out effectively because of the output of the workers employed in the Civil Maintenance Department are without any basis. 1st Party submits that its function is to manage the airports, the civil enclaves and the aeronautical communication stations effectively whereas the Civil Maintenance Department is concerned with maintenance and up keeping of the buildings, and as and when the complaints are received from different quarters, the same are attended by the contractors through his contract labourers. The allegations, therefore, made that the activities of the Civil Maintenance Department which were carried out on the premises of the 1st Party could not be segregated, separated or carved out of the entire work and activities of the 1st Party and not true. The duties performed by the contract labourers are of a routine nature; for which they do not possess any technical qualification. The allegations, therefore, made that the nature of duties performed by the workers, irrespective of their labels i.e. whether permanent or temporary or otherwise, were of permanent and perennial nature and were the integral part of the entire activities of the establishment of the 1st Party are not true.

The 1st Party submitted that the said Sr. Superintendent is a high dignitary who is in charge of the three shift labourers of the establishment. His contract labourers is assigned to the general maintenance of the airport. The contract labourers perform the duties of the nature of a routine and regular nature and the duties of the nature of duties which are of permanent and perennial nature. The allegations, therefore made that the contract labourers were performing the duties not only of permanent and perennial nature but also of the essential nature are borne out by facts and the same are not true. 1st Party submitted that, the allocation

of work in respect of the concerned workmen/contract labourers is done by their contractor and not by the Executive Engineer. The allegations, therefore, made that it was in that background and state of function of the Civil Maintenance Department that, the allocation of work was done by no less a person/executive than Engineering-in-charge are false. 1st Party submitted that the method and the manner in which the duties are allotted and the instructions are issued to the contract labourers/concerned workmen and to the permanent workmen, rest with the contractor and the officer of the department respectively. 1st Party submitted that, it did not carry on any systematic activities; so far as the functioning of the Civil Maintenance Department at Terminal 1A is concerned. The allegations therefore, made that the method and the manner in which the duties were allotted and the instructions were issued to the concerned workers, as well as the permanent workers were in the systematic activities carried out on the establishment of the 1st Party. 1st Party further submitted that, on applying judicial tests laid down by the Apex Court: by no stretch of imagination, its Civil Maintenance Department can be brought in the ambit of an 'undertaking' or 'industrial establishment' within the meaning of Section 2(k) of the said Act. It denies that the Civil Maintenance Department of the 1st Party satisfies the test of nature of industry in itself as alleged. The contract labourers were appointed by the Contractors, the wages and other benefits are given by the contractor, the allocation of work as well as the control and supervision over their work is done by the contractor or his supervisor or the representative as the case may be. The contractor initiates the disciplinary action against the concerned labourers. The allegations, therefore, made that the very fact that the allocation of the work to the concerned workers employed in Civil Maintenance Department, irrespective of their status was entrusted in the hands of the Engineer-in-charge was itself one of the indications and pointer to show that all the concerned workers employed with Civil Maintenance Department of Terminal 1A were the direct employees of the 1st Party and introduction of the so-called contractors was nothing but subterfuge and device to refute and deny the real and direct relationship of employer-employee between the 1st Party and the concerned workmen, are without any basis and the same are not true. 1st Party submitted that it has no role to play in respect of allotting shift to the contract labourers and no duty roster is maintained by it and contract labourers report for duty in shifts at the instructions of the contractors. It submitted that, the allegations made that preparation of duty roster and, specification of the shifts therein by J.E. (now known as Sr. Superintendent (C-1)) was one of the factors; which indicated that the concerned workers were issued instructions by the officials/Executives/Engineers/Managers etc. of the 1st party are nothing but figment of imagination and the same have been made with ulterior motive. 1st Party also denied the allegations that the name-

lending contractors who were merely introduced as intermediaries had no role to play in those matters. 1st Party further submitted the concerned workmen have to apply for leave to his employer i.e. contractor and they had never applied to the Sr. Superintendent/Junior Engineer and hence, the question of sanctioning the same by the 1st Party does not arise. Since the concerned workmen did not and cannot apply for leave to the Sr. Superintendent/Junior Engineer the question of initially acknowledging the application and subsequent refusing the same after the concerned workmen, through their Union filed proceedings against the 1st Party did not arise. The allegation, therefore, made that as far as leave of any of the worker was concerned, he had to apply to the Sr. Superintendent/J.E. for the same, who sanctioned it and that initially Sr. Superintendent/J.E. used to give acknowledgement of the leave applications on the copy meant for the concerned workmen but after the concerned workmen through their union filed proceedings against the 1st Party the concerned Sr. Superintendent/J.E. refused to give acknowledgement or the receipt of leave applications are without any basis and the same are not true and are without any basis. It reiterated that the 1st Party is not concerned with the leave applications of the concerned workmen. The allegations, therefore, that in the matter of leave, it was the management of 1st Party, who refused, rejected or sanctioned leave of the concerned workmen are not borne out of the facts and the same are not true. 1st Party submitted that, in case of permanent workers appointed by it the provision of leave is governed by the Service Regulations coupled with the bilateral settlement reached between it and the recognized Union from time to time. 1st Party submitted that the contract labourers/concerned workmen, whenever they remain absent from duties or whenever they intend to go on leave; they have to mention the same in writing addressed to their contractor, who deals with the same. 1st Party submitted that, it is not aware whether the concerned workmen had never been given any fixed quantum of leave by the contractors but on the contrary their wages are deducted by the management of the Contractors, whenever they proceed on leave. It further submitted that if there was any grievance in this regard; the concerned workmen or the Union should have approached the contractors and should have ventilated their grievances; in accordance with the prescribed procedure. 1st Party contended that, the permanent workers are issued the Identity Cards, however, in the past, the contract labourers were also issued the identity cards by Bureau of Civil Aviation Security on the applications of the contractors with its contract labourers and recommendation but now the tokens are issued by the Central Industrial Security Force on a day-to-day basis on account of security reasons. Hence, the allegations that, the contractors were required to give letter to 1st Party every month with the list of workers which was subject to the approval of the Engineer-in-Charge and was issued

by BCAS only on the authorization of the Engineer-in-charge are not correct. The passes bearing photographs of the workers are issued by BCAS, generally for a longer period whereas the metal tokens are issued by the CISF for a day. The contract labourers are required to obtain "Parchi" every day for tokens, wherein the details are filled in by the security agency on the basis of the information furnished by the contractors. The allegations, therefore, made by the second Party that, those columns of information therein was based on the monthly letters which were issued by the 1st Party to the so called contractors were based on the monthly letters issued by the 1st Party to the so called contractors signed by the JE/Sr. Superintendent, Assistant Engineer, Engineer-in-charge, Dy. General Manager (Civil) etc. are not correct. 1st Party also contended that, the security agency maintains the record of the presence in respect of the concerned workmen and, therefore, the allegations that, the 1st Party had been maintaining meticulous records regarding entry, exit and, persons on the establishment, including the workers concerned are without any basis. It further contended that, neither the Union nor the concerned contract labourers made any grievance at any time that their names were struck off and some other names were substituted. The allegation, therefore, made that, in fact, though all the workers concerned in the present reference as well as those concerned in the Writ Petition No.78 of 2000 were continuously working, after filing of the said Writ Petition, with a view to create false impression about the temporary nature of work and with a view to conceal the truth and the real nature of employment, in respect of the workers concerned, different methods and devices were followed by the management of the 1st Party through the Engineer-in-charge and the names of the workers were, at times struck off and instead of such workers; names of some other workers were substituted are without any basis. 1st Party reiterated that, the allocation of work to be performed by the contract labourers in the present reference is done by the Contractor himself or by his supervisors and the work of civil maintenance has to be performed as and when required which is of an intermittent and not of a perennial nature and it is not true that due to heavy traffic of passengers and cargo there was constant tear and wear of the facilities and it was imperative that the maintenance was done immediately and continuously. 1st Party contended that, for smooth functioning of the activities of the 1st Party there should be proper co-ordination of all the departments. 1st Party submitted that, there are various departments e.g. House-keeping, Electrical, Operations, Electronics and Civil which carry out the inspection of the Terminal Building for Daily Maintenance Check. 1st Party denied the allegations of the 2nd Party that it was for the purpose of, amongst other that the 1st Party had four Departments which looked after day-to-day maintenance of the Establishment/Airport and that those four departments were House Keeping (HK), Civil Maintenance Department

(CMD), Electrical Maintenance Department (ED), and that, those four departments, in harmony with each other performed the functions of maintenance of the Airports are not totally true. 1st Party submits that the inspection is carried out by the representatives of the said departments and not by the officers of those as alleged by the Union, in order ensure that the deficiencies/complaints are attended immediately instead of passing the same through various channels; in order to avoid red tapism. Hence, the allegations that for the performance of the maintenance of the building officers of the 1st Party or the representatives of two Departments were required to do the thorough check and to note down the observations and actions required by the concerned Department/s in the "Daily dedicated Group Register" are not totally true. It is submitted that the DDG of Terminal IA is done twice in a week and the representatives of Civil, Electrical, Electronics, House Keeping and Operations remain present for DDG inspection. 1st Party denied that, the register was always signed by the representatives of those three departments and that a copy of that DDG was kept with each department and that the Civil Maintenance Department's copy of said DDG with the Manager Engineer who kept it in a diary maintained by Civil Maintenance Department and the diary and the date carried seal of the Department are not true, apart from the fact that, the said allegations have no relevancy in adjudicating the issues covered under the order of reference. 1st Party submitted that, the DDG inspection notings prepared by the Housekeeping Department are forwarded to Sr. Manager Engineering (C) who in turn forward the same to the Manager Engineering for necessary action who routes the same to the Sr. Superintendent Engineering (C). The Engineer-in-charge does not maintain the register for civil complaints. The Manager Engineering does not allot work to the Junior Engineer/Sr. Superintendent it is contractor who allots the work to the contract labourers who carry out the necessary work. The contractor or his representative oversees the work allotted to them, however, JE/Sr. Superintendent takes round while the work is going on. The allegations, therefore, made that the Manager Engineering make noting on the DDG, allots work to the JE/Sr. Superintendent concerned, who in turn allots it to the workers, who carry out the necessary work and that JE/Sr. Superintendent personally oversee the work being done by the concerned workers are not true. It is contended by the 1st Party that, the Engineer-in-charge does not maintain the register for civil complaints/requirements but the Sub-division office maintains the same. The said register is being maintained since last one year by virtue of ISO requirements. It is, therefore, denied that the Engineer in charge also maintained the register for civil complaints/requirements which was certified by the JE/Sr. Superintendent and the Assistant Engineer based on the complaints received from the House-keeping Department and Airport Manager. The averments made in respect of the names of the officers working in

CMF-IA where the concerned contract labourers are deployed are correct. It is submitted that, the concerned contract labourers are required to work in all the shifts. The material required for attending to the complaints are issued by the Department from its stores and the entry of the same is made in MAS (Material At Site) Accounts Register by the Sr. Superintendent Engineer (C) who does not maintain work diary and hence the question of writing by him therein and certifying the work done by the contract labourers concerned and keeping the same in his custody does not arise. 1st Party submits that the bill for payment to the contractor for the contract labourers deployed by him is prepared by the contractor on the basis of his Attendance Register and Wage Register after making payment to them by him and the payment is made in accordance with the contractual terms. The allegations, therefore, that on the basis of the work diary, the Engineer-in-charge prepared payment bills of the so called name-lender contractors and then payment was made to them are not true. It is further contended by the 1st Party that, the Airport Manager also maintains a complaint register and the Sr. Superintendent Engineer (C)/Manager Engineering (C) notes the complaints recorded therein for getting the same attended either through the contract labourers deployed by the contractors or through the running contracts. Hence, the allegations that, apart from those records, the Airport Manager also maintains the records of complaints received during the time, when the Engineer-in-charge was not on duty and allotted the work to the shift staff based on the complains received are not true. It is also denied by the 1st Party, all the registers were in the custody of the Junior Engineer. It is further contended by the 1st Party that, the maintenance of terminal buildings is being done through the Manager, House- Keeping; except maintenance of Civil, Electrical and Electronics installations. The report made by the Manager, House keeping on inspection of the Terminal Buildings is forwarded to the civil maintenance department for attending to the deficiencies hence, the allegation that prior to 2001, when on the advice of ISO, in order to attain international standards of maintenance of Airports, the maintenance of the building was done through the Manager House Keeping, in the manner as alleged is not correct. 1st Party denied that the substantial part or the responsibility of the airport managerial personnel was the supervision and control of the work being performed by the alleged/so called concerned workmen and that the Operation Department issue the job description (Duties and Responsibilities) of the Airport Manager of Terminals, much less of Terminal IA. 1st Party contended that the duties and responsibilities of Airport Manager in general have been prescribed by the Operations Department but it does not mean that the duties and responsibilities of the Airport Manager of Terminal IA have been specifically provided for. Hence, the allegations made by the Union that the Operation Department had issued the job description of the Airport Manager of

Terminal IA specifying the alleged duties are not correct. 1st Party further contended that the allegations made by the Union that the concerned workers who sat in the room outside the JE's office during the general shift were allotted work by the JE 1st Party also denied that, at the end of the general shift, when the JE left, the office was locked and the workers in the shifts operated from the pump house. It contended that the plumber maintains the register of complaints under the instructions of the contractor, who checks the same, as and when required. The Junior Engineer also checks the same; in order to ensure that the work requiring immediate attention is attended by the contract labourers promptly. The allegations, therefore, made that the plumbers during the shifts maintained a similar register of complaints under the direction of the JE, which was checked and counter-signed by the JE, who made the noting of the same are not true. 1st Party also submitted that, the contractor prepares the wage bill on the basis of the record maintained by him, hence the allegations that the wage bill was prepared by the JE on the basis of the records maintained by him and sends the details of the same to the so called contractor, who prepare the wage bill in accordance with the information furnished by the J.E. It is further submitted that, there is no supervisory on duty since July, 2002; who was removed by the contractor probably at the behest of the Union. Since the contractor has been supervising and controlling himself the work, it is his prerogative to keep the supervisor or not. It is denied by the 1st Party that, the supervision work was done by the Junior Engineer. It is submitted that, it was one of the conditions of the contract that the contractor is required to pay to his contract labourers atleast statutory minimum wages provided under the Minimum Wages Act, 1948. The allegations, therefore, made that it was thus apparent that, the rates of wages were determined and decided by the 1st Party and that, the so called name-lenders/so called contractors had absolutely no say in those matters are not correct. It is denied by the 1st Party that, there is any indication of a contract of employment; showing that, there is relationship of the employer and the workmen between the 1st Party and the concerned workmen as alleged. 1st Party further contended that, the list of the contract labourers, containing Sr. Nos. 1 to 20 covered at paragraph 18 of the original statement of claim, into the contract labourers from Sr. Nos. 1 to 18 have been incorporated at the end of the amended paragraph 13A. The said list constitutes a second group of contract labourers covered in the order of reference and it is not the third category of workmen involved in the present dispute, as contended by the Union. It further contended that, the persons shown at Sr. Nos. 1 to 18 of the list initially deployed at Terminal 2B but on commissioning of Terminal 2C, they were shifted to Terminal 2C. It is further submitted that, the 1st Party did not take a policy decision as such to employ contract labourers at Terminal 2B, when it was commissioned and there was no creation and sanction of the posts by the

competent authority to man the said Terminal as the work is not of a perennial and permanent nature and hence the job was entrusted from time to time to the contractors for maintenance of the civil work; in accordance with the prescribed procedure. 1st Party submitted that, its all departments are essential and integral parts but civil maintenance is not the incidental part of it. 1st Party contended that, the concerned workmen are not technically qualified in their trades and they do the work under the instructors of the contractor. The allegations made by the Union that the work of concerned workmen was continuous in nature is not correct as alleged. It denied that the letter dated 10-9-1999 issued by Mr. A.D. Kannan, Sr. Manager Engineering © (II) contain that the Terminal 2B/2C building cannot be maintained without the work of the concerned contract labourers. 1st Party contended that, the contents of the letter dated 31-10-2002 issued by Mr. M.R. Pushkaran, Manager Engg. ©-SG-SD to the Security Incharge, CISF, Mumbai, have been distorted by the 1st Party. It is submitted that, the tools, instruments, and plants required by the respective contract labourers are provided by the contractor and the materials required for carrying out the respective jobs are supplied by the departments, hence the allegations made by the Union that the same were provided by the 1st Party are not true. It is contended that, the contractor used to give the instructions to the concerned workmen for carrying out the work on the basis of the complaints received from the concerned sections and the contractor or his supervisor supervises and controls their work. It is, therefore, denied that, the officials of the 1st Party were also working at Terminal IIC to give instructions and to supervise the work of the concerned workers. It is denied by the 1st Party that, maintenance of the airports was continuous function and one of the main functions and that if the same was not carried on even for a single day the entire operations of the 1st Party would come to a stand still. 1st Party reiterated that, the contract labourers carry out the work of plumbing and masonry and denied that the work of the concerned workmen was of continuous in nature and that, the contents of the letter dated 10-9-1999 have been totally distorted by the 2nd Party. It also contended that, there is no post of carpenter even as per the designations shown by the 2nd Party in respect of the 18 contract labourers, hence the allegations made in respect of instruments, materials, apparatus etc. required for carpentry work are unwarranted. It submitted that, the said type of work being carried out by the contract labourers, 1st Party cannot engage Junior Engineer (JE) / Sr. Superintendent/ Assistant Engineer/Manager Engineer and AGM (Assistant General Manager - earlier that designation was known as Executive Engineer). The designation of Mr. M.R. Pushkaran is Manager Engg. (Civil) SG Mr. Hoda has been promoted as Asstt. Manager (Civil) and is, at present working at Calcutta Airport and whereas name of the Junior Engineer is Mr. Vinay Tamrakar and not Mr. Vinay Tamrakar as averred and that they do not give

instructions directly to the contract labourers and or supervise the work. 1st Party denied that the workers were/are issued necessary entry passes by it and that all the workmen employed at Terminal IIC were required to sign attendance register kept in the respective offices and those registers were/are counter-signed for the purpose of authentication by the Junior Engineer. It is submitted by the 1st Party that, the Muster Roll is maintained by the contractors, it however, maintains the same for the purpose of effecting payment to the contractor. It further contended that neither the place of work nor the location of the person working is material for determining the relationship. The allegations, therefore, that the muster roll was maintained by the Junior Engineer/Sr. Superintendent of Terminal IIC and was being certified by him are not correct and there is no question of keeping the same in their custody. The tenders were being scrutinized by the Committee entrusted with the said assignment and accepted after following the rules. It is, therefore, submitted that, the Union should have approached the contractors for their various benefits under the labour law. It submitted that, it did not adopt any modus operandi as contended by the 2nd Party but appointed the contractors in accordance with law, from time to time who was supposed to give the statutory benefits to the contract labourers. It is further contended that the concerned workmen cannot claim pay parity and other benefits available to the permanent workmen and that differentiating between the contract labourers and the permanent workmen is bound to be there as the contract labourers do not hold post. Equal pay for equal work is a concept which for the purpose of implementation requires complete and wholesome equality between two groups which is not there in the present case. It is, therefore, denied that the concerned workmen, in fact, were entitled to receive the same, similar and identical benefits without discrimination between them and other permanent workers based on the principle and the doctrine of 'equal pay for equal work' as alleged and that, the same were denied to them by artificial means and by subterfuging the conspectus of employment and that in other words, the artificial, sham and bogus contractors were introduced by the 1st Party with a view to deprive the concerned workmen of their statutory benefits under various industrial laws. It is submitted by the 1st Party that, the said question is to be decided by the Deputy Commissioner of Labour © as provided under the Central Rules and hence this Tribunal has no jurisdiction to decide the said aspect. It is submitted that, the illustration of the category of the post allegedly appointed through Junior Engineer, Assistant Engineer and Executive Engineer has been fabricated by the 2nd Party Union and had falsely made the allegations that the concerned workmen were appointed by the alleged officers of the 1st Party. It is reiterated by the 1st Party that the duration of the contract might be for a year or two and as and when the period was over, the new contractor in place of old was deployed hence the allegations made by the

2nd Party that, the so called contractors whose names went on changing were name lenders, without knowing and understanding the tendering system are not true. It is also contended that, the Union has not impleaded the concerned contractors in the order of reference, hence, it cannot cast aspersion on them behind their backs. 2nd Party cannot level the allegations against the said contractors who are not in a position to rebut the same and the allegations that, the they had never obtained any registration as commercial establishment under the Shops and Establishment Act or under the Factories Act. The contractors fulfilling the eligibility criteria as per the notice, inviting tenders are only issued tender documents in the specified tendering system and the contract is awarded after following the rules and regulations and in the said process contractors are bound to change, however, contract labourers remained the same by virtue of the orders passed by the Hon'ble High Court of Bombay in various Writ Petitions referred hereinabove. It is denied by the 1st Party that, the nature of work which the concerned workmen have been carrying out since last several years, had never been the work of intermittent nature. It is further contended by the 1st Party that, this Tribunal cannot decide whether the work carried out by the contract labourers is of permanent and perennial nature, as it is within the ambit of the Central Government. 1st Party contended that, it merely maintains the record in respect of a number of categories of contract labourers deployed by the contractor for the purpose of effecting payment to the contractor and not for the purposes and the manner as alleged by the 2nd Party Union and the said contract workers were/are not under the direct supervision and control of the officers of the 1st Party as alleged. It is denied by the 1st Party that, as far as the nature of supervision and control was concerned there had never been any difference of whatsoever nature between the permanent workers and the workers covered under the present reference. It submitted that, its all the departments are integral part of its establishment and all are equally important from the management point of view. It is, therefore, denied the allegations that it was Civil Maintenance Department which itself was an integral part of its establishment of 1st Party was one of the most important departments and that, the work of other departments was carried out effectively because of the output of the workers employed in the Civil Maintenance Department. 1st Party submitted that, its function is to manage the airports, the civil enclaves and the aeronautical communication stations effectively; whereas the Civil Maintenance Department is concerned with maintenance and up keeping of the buildings and as and when the complaints are received from different quarters, the same are attended by the contractor, through his contract labourers. Hence, the allegations made by the 2nd Party that, the activities of Civil Maintenance Department, which were carried out on the premises of the 1st Party could not be segregated, separated or carved out of the entire work

and activities of the 1st Party are not true. The duties performed by the concerned workmen are of a routine nature for which they do not possess any technical qualifications. It is denied by the 1st Party that the concerned workmen/contract labourers were performing the duties not only of permanent and perennial nature but also of essential nature and it submitted that the allocation of work in respect of the contract labourers is done by their employers i.e. contractors and not by the officers of the 1st Party as alleged. It is denied by the 1st Party that, the method and the manner in which the duties were allotted and the instructions were issued to the concerned workers as well as the permanent workmen, were systematic activities carried out in the establishment of the 1st Party. It is also submitted that, on applying judicial tests laid down by the Apex Court, but no stretch of imagination, its Civil Maintenance Department can be brought in the ambit of an "undertaking" or "industrial establishment" within the meaning of Section 2(ka) of the said Act. It denies that the Civil Maintenance Department of the 1st Party satisfies the test of nature of industry in itself as alleged. 1st Party reiterated that, the contract labourers were appointed by the contractor, wages and other benefits are given by the contractor, the allocation of work is done by the contractor or his supervisor, contractor initiates the disciplinary action against the contract labourers, hence, the allegations made by the 2nd Party Union in this respect are not true. 1st Party also denied that the allegations that, the name-lending contractors, who were merely introduced as intermediaries, had no role to play in those matters. It further submitted that, the concerned workmen have to apply for leave to their employers i.e. contractors and they had never applied to the Sr. Superintendent/Junior Engineer and, hence, the question of sanctioning the same or the question of acknowledging the same did not arise at all. It, therefore, denied the allegations that, in the matter of leave, it was the management of the 1st Party who refused, rejected or sanctioned leave of the concerned workers. It contended that in the case of permanent workers appointed by it, the provision of leave is governed by the Service Regulations; couple with the bilateral settlement reached between it and the recognized Union from time to time and the concerned workmen have to apply for leave to their contractor. It is contended by the 2nd Party that, the allegations that, in fact all the concerned workmen were continuously working, after filing the Writ Petition No.78 of 2000 with a view to create false impression about the temporary nature of work and with a view to conceal the truth and real nature of employment, in respect of the workers concerned, different methods and devices were followed by the Management of 1st Party through the Engineer-in-charge and the names of the workers were, at times, struck off and instead of such workers, names of some other workers were substituted are without any basis. 1st Party further contended that, there are various department such as House Keeping, Electrical, Operations, Electronics and Civil,

which carry out the inspection of the Terminal Building for Daily Dedicated Group. It further contended that the inspection is carried out by the representatives of the said department and not only by the officers as averred therein by the Union in order to ensure that, the deficiencies/complaints are attended to immediately instead of passing the same through various channels in order to avoid red tapism. The allegations regarding performing of the maintenance of the buildings, the Manager House Keeping alongwith the ME, Civil and the ME, Electrical or a representative of two departments did a thorough check of the terminal building and noted down the observations and action required by the concerned department in a "Daily Dedicated Group Register" are not totally true. It submitted that the DDG of Terminal 2C is done twice in a week. The representatives of Civil Electrical, Electronics, House Keeping and Operations remain present for DDG inspection and the DDG report is prepared by House Keeping and is signed by all the said officials. Whenever the operations and electronic department representatives are not available the DDG inspection is carried out by Civil, Electrical and House Keeping Department, whose representatives, three in numbers sign the same, which is prepared by House Keeping Department. It contended that, the Manager Engineering does not allot work to the Junior Engineer/Sr. Superintendent, the contractor allots the work to the contract labourers who carry out the necessary work. The allegations, therefore, made that, the Manager Engineering made a noting on the DDG allotting the work to the JE/Senior Superintendent concerned who in turn allowed it to the workmen who carried out the necessary work and that the Senior Superintendent/JE personally over-saw the work being done by the workmen and reported the matter to the ME are not correct. The said register is being kept for last one year by virtue of ISO requirement. The letter head of the 1st Party carries the logo of ISO 9001-2001 as the Mumbai Airport as certified for the same on 26-6-2002. It contended that the allegations that the Sr. Superintendent also maintained the Work Diary, wherein he wrote and certified the work done by the workers concerned and the same was kept in his are not true and the same have already been dealt with hereinabove. It reiterated that the bill for payment to the contractor for the contract labourers employed by him is prepared by the contractor on the basis of the attendance register and wage register after making payment to them by him and the payment is made by him in accordance with the contractual terms. The allegations, therefore, made by the Union in respect of the maintenance of the register and payment are not true. 1st Party contended that the maintenance of terminal building is being done through the Manager, House Keeping, except maintenance of Civil, Electrical and Electronics installations, the report made by the Manager, House Keeping on inspection of the Terminal Building is forwarded to the Civil Maintenance Department for attending to the deficiencies. The allegation, therefore, that prior to 2001

when on the advice of ISO, in order to attain international standards of maintenance of airports, the maintenance of the building was done through the Manager House Keeping who did a thorough check of the terminal building and sent a Job Request in the prescribed proforma to the ME of the Civil Maintenance Department for tasks to be carried out are not fully correct. It submitted that, there is no relevancy of the rest of the averments in respect of the proforma of job request of the House Keeping Section. 1st Party denied the allegations made by the 2nd Party Union that the substantial part of the responsibility of the airport managerial personnel was the supervision and control of the work being performed by the alleged contract labourers. The allegations made by the 2nd Party in this respect are not correct. It is submitted that, it is one of the condition of the contract that the contractor is required to pay to his contract labourers at least statutory minimum wages provided under the Minimum Wages Act, 1948. 1st Party also denied rest of the allegations made by the 2nd Party in this respect. It is contended that, there is no any indicia of a contract of employment showing that there is relationship of the employer and the workmen between the 1st Party and the concerned Workmen. 1st Party reiterated that the contracts are not sham, 1st party does not exercise supervision and control over the work performed by the contract labourers, the contents of the earlier contracts prior to 1998 and the subsequent contracts are the same. 1st Party further submitted that, it had inadvertently earlier mentioned, as maintenance of civil work in T-2B (labour) instead of maintenance of civil work in T-2B ('job work') and the change of wording has nothing to do with the filing of writ petitions in the High Court by the Union and hence the demand for production of copies of contracts is redundant. It admitted that the nomenclature does not hide the nature of the contract. 1st Party further contended that, the role of the contractor had not changed even after 1998 as they were not the supplier of labour in the past but by virtue of orders passed by the Hon'ble High Court from time to time, the contract labourers had been protected from termination of their services; pending the hearing and final disposal of the matter. The contracts entered into with the contractors were fair, proper, bonafide and legal. It is, therefore, denied that in fact after 1998, since most of the workmen were protected by the orders of the Hon'ble High Court, the contractor had no role to play even in supply of labour and was a mere paper arrangement for routing the money and depriving the workmen of their rightful wages and claims. 1st Party reiterated that the contracts entered into with the contractors, prior to 1998 or subsequently, were in accordance with the prescribed procedure. The contract labourers were recruited by the contractors themselves and that, in the past whenever the contractor was replaced by a new contractor after expiry of the period of the contract of the earlier contractor, the new contractor recruited his own hands. Therefore, the allegations made by the 2nd Party that, even prior to 1998,

the contractors were mere paper arrangement and most of the workers had in fact been appointed by the officers and management of the 1st Party through those sham contractors and that was the reason why they had continued to remain in employment are not correct. 1st Party submits that the concerned workmen have been protected by the order of the High Court. 1st Party contended that the contractor has to fix the wage scales, wages, determine the conditions of service in consultation with the Union. 1st Party is not aware whether the Union has served a charter of demands on behalf of the contract labourers on the contractor. 1st Party submitted that the 2nd Party Union cannot claim for the contract labourers pay parity and the standardised conditions of service with those of permanent workmen. The allegations made by the 2nd Party that, the concerned workmen had been thoroughly and totally exploited are not true for the reasons averred hereinabove. It is denied by the 1st Party that, the exploitation continued, despite the fact those workers have been performing the very same, similar and identical duties and at par with the permanent workers of the 1st party and denies rest of the allegations made by the 2nd Party in this respect as regards the contractors and difference in the pay, standard benefits, etc. being extended to the permanent workmen and the concerned workmen for the reasons as stated hereinabove and reiterate that the concerned workmen are not entitled to claim the same from the 1st Party. 1st Party further contended that the Union did not take up the cause of the contract labourers/concerned workmen to claim the fringe benefits averred therein, for which it cannot find fault with the 1st Party and that the benefits averred by the Union cannot be extended to the contract labourers/concerned workmen as they are not its workmen. It is denied by the 1st Party that, the concerned workmen were given step-motherly treatment, they were not even extended the just and fair statutory benefits under the various labour laws by the 1st party. 1st Party submitted that the provisions of Article 39 of the Constitution of India accentuates the basic philosophy of idealistic socialism and the doctrine of "equal pay for equal work" is a concept which for the purpose of implementation requires complete and wholesome equality between two the groups, moreover contract labourers/concerned workmen are not the workmen of the 1st Party for various reasons such as (i) they were employed by the contractor, (ii) neither the place of work nor the location of persons working is material for determining the relationship, (iii) no right and obligation of disbursement of wages exist, (iv) 1st Party has no control, supervision over their work, (v) 1st Party has right of determining conditions of services exists, (vi) 1st Party has no power to initiate disciplinary action against them. 1st Party also submitted that the provisions of the Industrial Employment (Standing Orders) Act, 1947 are not applicable to the establishment of the 1st party by virtue of the provisions in the said Act itself and the employees of the 1st Party were governed by its Service

and Disciplinary Regulations viz. the L.A.A.I. (General Conditions of Service) Regulation, 1980; which were operative till 22-5-2003 and the same were replaced by the A.A.L. (General Conditions of Service and Remuneration of Employees) Regulations, 2003 which came into force w.e.f. 23-5-2003 and the I.A.A.I. (Conduct, Discipline and Appeal) Regulations, 1987 were operative till 8-5-2003 and the same were substituted by the A.A.I. (Conduct, Discipline and Appeal) Regulations, 2003 which came into force from 9-5-2003, the allegations, therefore, that the provisions of the Industrial Employment (Standing Orders) Act, 1946 were applicable to the 1st Party and in view of the definition of the term employer under Section 2 (d) of thereof, the 1st party itself was the employer of the concerned workmen are not true. It further contended that the present reference has been made by the Government of India, Ministry of Labour, New Delhi under Section 10(1) of the Act at the instance of the Bombay High Court, since the contract labourers/concerned workmen were not employed by it, there was neither express nor implied contract of employment. Moreover, the intention of the legislature is further clear in giving restricted meaning to the definition of the word "workman" from the fact that even the employee employed; drawing wages and working at the premises is excluded as a class by virtue of the provisions of Section 2(s) and (iv) of the Act since the condition of a person being a "workman" within the meaning of definition is that, he should be employed to do the work in that industry. From the definition of the term 'workman' under Section 2(s) of the Act the contract labour is excluded from it. It, therefore, denied that the concerned workmen are employed by it. 1st Party contended that the fringe benefits and facilities are provided to its regular workmen by virtue of bilateral settlements between the 1st Party and the recognized Union from time to time and the said benefits are attached to the definite post and the contract labourers employed by the contractor did not hold post in its establishment and hence there cannot be comparison between two groups. The contractors fulfilling the eligibility criteria are only issued tender documents in specified tendering system and the contract is awarded after following the prescribed procedure on the terms and conditions set out therein. 1st Party further submitted that if the contract labourers/concerned workmen did not get the statutory benefits for years together, as alleged by the Union it should have taken necessary steps to redress their grievances and obtained the necessary statutory benefits for which the 1st Party cannot be blamed. 1st further contended that the regular workmen and the contract labourers do not fall in the same class and unfair labour practice provided under item 9 of the Fifth Schedule read with Section 2(ra) of the Act is not applicable to the facts of the case; as the contract labour is not a 'workman' as defined under Section 2 (s) of the Act, apart from the fact that the Fifth Schedule inserted by the Industrial Disputes (Amendment) Act, 1982 cannot be enforced; as this

that the so called contractors who were engaged as intermediate changed from time to time was nothing but sham and bogus arrangement and it was a camouflage to deprive the present workmen covered in Writ petition No.78 of 2000. The allegations made by the 2nd Party that the so called contractors had no role to play even in supply of labours and it was mere paper arrangement for routing the names and depriving the workmen concerned of their rightful wages and claims are without any basis and the same are hereby denied. 1st Party reiterated that contracts entered into with the contractors were legal, valid, fair and *bona fide*. It is, therefore, denied by the 1st Party that, the entire paper arrangement and the so called contracts were against the provisions of Section 23 and 27 of the Indian Contracts Act, 1872, and that it was with a view to deprive the concerned workmen of their statutory benefits and the benefits of permanency which the concerned workmen were entitled to receive based on various legislations such as Provident Fund and Misc. Provisions Act, 1952, E.S.I. Act, Payment of Bonus Act and Industrial Employment (Standing Orders) Act, 1946 are without any basis and the same are not true for the reasons averred hereinabove. 1st Party reiterated that the contractors were appointed in accordance with the prescribed rules even prior to 1998 and the contractors recruited the contract labourers/concerned workmen to carry out the jobs assigned to them by his supervisor. 1st Party further submitted that the creation of posts was not sanctioned by the Competent Authority as the work is not of a perennial and permanent nature and hence there are no posts of regular workmen at Terminal 2C, it therefore, entered into contracts from time to time, in accordance with the prescribed procedure with contractors; who executed the specific jobs provided in the contracts. The jobs performed by the contract labourers/concerned workmen and those by the regular workmen were not necessarily the same. 1st Party further contended that the contract labourers/concerned workmen do not fall in the class of the regular workmen and hence no an unequal treatment was meted out to the equals and that their said actions were against the principles of equality guaranteed to every citizen of nation under Article 14 and 16 of the Constitution of India are not true. 1st Party further submitted that averments further made that the scope of work and the man-power to be deployed per day for the same was set out in the so called contracts which included existing water supply line, sluice valve and distribution system, attending various complaints in the building etc. do not convey clear cut meaning, apart from the fact that it did not give corresponding provision in the contract and hence, it is not in a position to meet the same.

1st Party further submitted that the words such as 'in case of default' 'other disciplinary control' 'to do the maintenance work only', 'prior' etc. have been injected by the 2nd Party Union for the reasons best known to the 2nd Party. 1st party further contended that the contract labourers/concerned workmen are not subjected to the

medical examination/checkup by the authorized medical officer of the management, before being recruited by the contractor and it is therefore denied that there were occasions; that the workmen proposed to be employed through the so called contractors were required to undergo to medical examination/checkup by its authorized Medical officer. It is denied by the 1st Party that the substantial part of the responsibility of the Airport Managerial Personnel was the supervision and control of the work being performed by the so called contract workers/concerned workmen. 1st Party further contended that the contracts between it and the contractors are of a multifarious nature, depending on nature and requirements of work, since the contracts are of a variety of nature; the control of the management varies from contract to contract, therefore, it denied the allegations that the contract between the so called contractors and 1st party were always stereo-type and full and complete control was vested in the 1st party. 1st Party submitted that, whenever it enters into the contract with the contractor, be brings the man-power, as and when the contract period is over, the contractor transfers the contract labourers to other project. However, in this case the High Court has protected the services of the contract labourers at the request of the Union, pending the hearing of the proceedings. Inspite of being well aware of the ground realities in this regard, time and again, the allegations have been leveled that though the so called contractors went on changing and the earlier set of so called contractors was replaced by the fresh contractors, the workmen still continued to work on the establish of the 1st Party, which are not true. It is contended by the by the 1st party that the allegations that the 1st Party being Authority under Article 12 of the Constitution of India, the discriminatory treatment meted out by them to the concerned workmen under the guise of employing them through the so called contractors was uncalled for and unjustified are not true. It is further contended by the 1st Party that, the Directive Principles of State Policy under the Constitution of India has no application to the facts of the case, since the contract labourers/concerned workmen were employed by the contractor, the question of indulging in any discrimination and giving fair service conditions and fair wages to the contract labourers without discrimination did not arise. It further contended and reiterated that no direct relationship can be established between it and the contract labourers/concerned workmen, it is denied that upon lifting of the veil, it could be seen that there was direct employer/employee relationship between the 1st Party/employer and the concerned workmen and the so called contractors, who were brought in picture was nothing but camouflage as alleged. It is further contended that, the allegations that, the engagement of the workmen on large scale under the label of contract labours was victimization of the concerned workmen and it was *malafide* action on the part of the 1st Party employer in as much as the 1st Party was fully aware that all the workmen covered under the present reference

were performing the duties of regular, permanent, perennial, important and are of essential nature and are without any basis and the same are not true. 1st Party further contended that, the contractors were registered under the provision of the Contract Labour Act and they are/were having valid and proper licences for recruitment of contract labourers hence it is denied that the contractors were not registered under the provisions of Contract Labour (Regulation & Abolition) Act and did not have valid and proper licences for recruitment and engagement of contract labourers and they are also registered with the Public Works Department, Central Public Works Department and the Public Sector Undertakings and the registration certificates are issued by the authorities of the said Department. It is contended by the 1st Party that, the allegations that the so called contractors themselves had no experience or knowledge or skill or professional qualifications, etc. required to carry out jobs and to meet the requirements of the 1st Party and that on the other hand the concerned workmen were having necessary skills, experience, qualifications, etc. to perform their respective duties are not true. It is submitted by the 1st Party that, the order of reference dated 20-3-2003 does not specify by name "Kharve Ganpat Magan" but specifies the name as "Ganpath" at Serial No.9, working at Terminal 2B and not at Terminal 2C, in the said order of reference, the said contract labourers are shown as helpers/beldars but the Union has shown them as sewerman. Whereas at the end of paragraph 13A of the statement of claim at p.17, they are at Sr. Nos. 9 and 15; wherein they have been shown as helpers/beldars. The Union cannot enlarge the scope of the reference, by changing their designations. It further submitted that, in all the three shifts, there are two sewermen, one plumber and one helper in each shift. However, in the general shift, there is a sewerman only, hence the allegations that sewerman were deputed in all three shifts round the clock for maintenance of choke up work are not correct. It further submitted that the sewermen have to attend the work of maintenance as and when required for maintenance of the choke up work, the allegations therefore that they had to attend on a daily basis atleast ten times a day are not correct and the chamber cleaning work is done as and when required, hence the allegations that the same was done on monthly basis is not correct. The drainage line is cleaned by the sewerman by the use of the tool put meant for the purpose hence it is not true that the drainage line was cleaned by sewermen by entering into the main line once every month. Water main line and sewer main line are cleaned as and when required and not twice every month as alleged. It contended that, the work done by everybody is crucial in it. It is said:

(37) It is contended that, the order dated 16-11-1999, the Government of India, Ministry of Labour, New Delhi has inter alia provided that the wages consisting of basic pay and dearness allowance be paid to the lowest category of regular employees to the contract labourers.

establishment are to be paid to the contract labourers. Aggrieved by the said Circular 1st Party filed a writ petition in the Hon'ble High Court of Delhi being Civil Writ Petition No.6540 of 1999 and the Hon'ble High Court of Delhi by its order dated 22-11-2001, gave the liberty to the parties to approach the Central Government, in accordance with law for reconsideration of the matter, in view of the subsequent decision of the Supreme Court in Steel Authority of India (Supra) representation dated 27-3-2002 was submitted to the Joint Secretary, Ministry of Civil Aviation, New Delhi who in turn issued an Office Memorandum dated 3-7-2002 to the Ministry of Labour, Government of India, New Delhi, in this regard for review of the circular dated 16-11-1999 relating to the wages payable to the contract labourers. Board recommended to the Government of India that a part of its recommendations relating to the wages payable to the contract labourers indicated in the circular dated 16-11-1999 be treated as withdrawn; as it had no powers to make such recommendation under the provisions of the Contract Labour Act and the Central Rules. In this regard the Under Secretary to the Government of India, Ministry of Labour, New Delhi issued a note, dated 24-2-2003, to the Chief Labour Commissioner (c), New Delhi, thus the circular dated 16-11-1999 based on the recommendations made by the Board, relating to the wages payable to the contract labourers has no any force of law. 1st Party therefore submitted that, in view of the above position, the question of not paying the basic pay plus dearness allowance at the rate applicable to the lowest category of regular employees to the contract labourers/concerned workmen does not arise. Order dated 8-2-2000 was passed by the Hon'ble Bombay High Court in Writ petition No. 78 of 2000, granting wages consisting of basic pay plus dearness allowance; paid to the lowest category of regular employees to the contract labourers/concerned workmen. Management filed Notice of Motion No. 79 of 2000, praying for modification of the said order dated 8-2-2000 and the Division Bench of the Bombay High Court by its order dated 2-5-2000 held that it was premature to modify the said ad-interim order dated 8-2-2000, in view of the fact that the issue of payment of basic wages and dearness allowance payable to the contract labourers/concerned workmen, as paid to the lowest category of regular employees was seized by Delhi High Court in Civil Writ Petition No.6540 of 1999 and the said Notice of Motion was dismissed as premature and later on, the Hon'ble Delhi High Court by its order dated 22-11-2001 quashed the impugned notification dated 16-11-1999 issued by the Central Government for the reasons given therein, giving the parties liberty to approach the Central Government, in accordance with law for reconsideration of the matter in view of the decision of the Supreme Court in Steel Authority of India Ltd. (Supra). 1st Party submits that in view of the said developments, 1st Party approached Bombay High Court by taking out another Notice of Motion being No.169 of 2002 in Writ Petition No.78 of 2000 for modification of the said order dated

8-2-2000 which came up for hearing alongwith the said Writ Petition on 16-12-2002. Though the said Notice of Motion was pressed for the order, no order was passed; observing *inter alia* that all contentions of parties are kept open to be agitated before the Industrial Tribunal hence the allegations made by the 2nd Party that the Notice of Motion was not pressed by the 1st Party are not true. In view of the above position the contract labourers/concerned workmen are thus not entitled to receive payment by way of interim relief, the wages equal to the basic and D.A. payable to the regular employees and hence, the said order dated 8-2-2000 passed in Writ Petition No.78 of 2000 may be vacated. 1st Party submitted that the status quo is being maintained by virtue of the interim orders passed from time to time and last one dated 16-12-2002 passed by the Hon'ble Bombay High Court in Writ Petition No.78 of 2000. The contract labourers/concerned workmen are therefore being continued. The contractors normally refuse to execute the contractual assignments with contract labourers appointed by the old contractors being continued. With great difficulty and persuasion, a few entered into the contracts with it, if the status quo is maintained indefinitely; definitely it will cause not only inconvenience, monetary loss, prejudice and hardship but also sufferings and agony, which cannot be compensated in terms of money. The allegations that protection was granted to the present set of workmen and if the same was continued, it will not cause any prejudice or hardship to the 1st Party in any manner whatsoever are without any basis and the same are not true for the reasons averred hereinabove. It is, therefore, submitted by the 1st Party that, the order dated 16-12-2002 passed in Writ Petition No.78 of 2000 by the Hon'ble Bombay High Court granting protection of continuing the contract labourers may be vacated. The contract labourers/concerned workmen have been performing their duties as in the past as the work is of a routine nature. It is contended that the Hon'ble High Court has directed the 2nd Party to apply to the concerned Industrial Tribunal for interim relief within a period of four weeks from the date of notice of reference, it submits that the Union/contract labourers are not entitled to any benefit in terms of interim relief for the aforesaid reasons. 1st Party submits that, considering the tenor of the terms of the contracts reached between the 1st Party and the respective contractors, the Hon'ble Tribunal cannot hold and declare that, the same were sham and bogus and were camouflage deprive to the contract labourers/concerned workmen of the benefits available to permanent workmen of 1st Party. 1st Party further submitted that, this Hon'ble Tribunal cannot go into the said aspect as the order of reference dated 20-3-2003 itself is null, void and bad in law; as the Government of India did not exercise the powers vested in it under Section 10(1) of the Act, before referring the alleged industrial dispute specified in the order of reference for adjudication and the industrial dispute espoused by the Union does not fall within the purview of Section 2(k) of

the Act. 1st Party also submitted that this Hon'ble Tribunal cannot hold and declare that the contract labourers/concerned workmen are direct employees of the 1st Party nor can pass any order directing the 1st Party to give status, equal wages, wages and consequential benefits and privileges of the permanent workmen, to the contract labourers/concerned workmen effective from any date, much less from the day/date each one of them had completed continuous service of 240 days, at par with the permanent workmen and pay them the arrears arising therefrom, with 18% compound interest since this Hon'ble Tribunal has no jurisdiction and authority to grant any relief, on account of the order of reference itself being non-existent for the aforesaid reasons. (It is further contended by the 1st Party that, this Hon'ble Tribunal cannot pass the order, pending hearing and final determination of this reference directing 1st Party to give all the benefits; applicable to its regular workmen, to all the said concern persons number 33 with immediate effect, as it would tantamount to granting the final relief, which cannot be done, unless the alleged industrial dispute is adjudicated on merits. The interim relief should not be the whole relief that the contract labourers may get, if they succeed finally and the question whether the contract labourers/concerned workmen are entitled to receive all the benefits applicable to the permanent workmen of the 1st Party, to all the 33 concerned workmen with immediate effect cannot be adjudicated by this Hon'ble Tribunal as the same has to be determined by the Dy. Chief Labour Commissioner (c) as provided under the Central Rules.

(38). It is also submitted by the 1st Party that this Hon'ble Tribunal cannot pass the order, pending the hearing and final determination of the reference, directing the 1st party to pay wages consisting of basic wages plus dearness allowances paid to the lower category of regular employees doing the same workmen, as the contract labourers/concerned workmen, to all the 33 concerned workmen since the order of reference itself is null, void and bad in law; for the aforesaid reasons, 1st Party further submitted without prejudice to the aforesaid reasons, that this prayer is already covered in paragraph 28(F) of the Statement of Claim, hence its aforesaid reasons applies with equal force to this prayer of the 2nd Party also as the basic wages and dearness allowances constitute benefits. It is also reiterated by the 1st Party that, the question whether the work performed by the contract labourers is the same work as carried on by its permanent workmen cannot be adjudicated by this Hon'ble Tribunal but the same has to be determined by the Dy. Chief Labour Commissioner (C) under the Central Rules and hence, the Hon'ble Tribunal has no jurisdiction to adjudicate the said aspect of the dispute and the question of adjustment with the final determinate/outcome of the reference does not arise. 1st Party further contended that the 33 concerned workmen are not its workmen. The 2nd Party Union should have raised the demands against the contractors, who have

not even been imp. leaded in this reference and the necessary and proper parties; order of reference itself is prima-facie null, void and bad in law and hence this Tribunal cannot pass the order pending the hearing and final disposal of the reference, directing 1st Party to give all the statutory benefits to the said 33 concerned workmen under The Employees' Provident Funds and Miscellaneous provisions Act, 1952, The Employees' State Insurance Act, 1948, The Payment of Bonus Act, 1965 as well as leave facilities and other statutory benefits given to the regular workmen forthwith for the aforesaid reasons. It is further submitted, without prejudice to the aforesaid averments, that, the question whether all the 33 concerned workmen are entitled to receive all the statutory benefits as well as the leave facilities and other statutory benefits given to the permanent workmen of the 1st Party forthwith, cannot be adjudicated by this Hon'ble Tribunal as the same has to be determined by the Dy. Chief Labour Commissioner (C) as provided under the Central Rules and hence, this Hon'ble Tribunal has no jurisdiction to adjudicate the said aspects of the dispute. 1st Party further contended that, the status quo has to be maintained till the interim application is decided by this Hon'ble Tribunal. In case the Hon'ble Tribunal decides the interim application against the Union, the question of maintain status-quo, pending the hearing and final determination of the reference in respect of contract labourers/concerned workmen does not arise and in these circumstances, the interim orders dated 8-2-2000 and 16-12-2002 passed in Writ Petition No.78 of 2000 be vacated. 1st Party further contended that, the 2nd Party Union/concerned workmen are not entitled to any relief hence, this Hon'ble Tribunal cannot pass any order granting any other, better or consequential relief as deemed fit as this Hon'ble Tribunal has no authority to grant any relief, and 2nd Party is not entitled to costs also and contended that the order of reference dated 20-3-2003 made by the Government of India, Ministry of Labour, New Delhi at the behest of the Hon'ble High Court is bad in law, for the aforesaid reasons, hence it prayed that, the order of reference dated 20-3-2003 be rejected.

(39) 2nd Party Union filed rejoinder, at Exhibit U-16, for the purpose of dealing with some of the new contentions raised by the 1st Party stating that it reiterates all the contentions and averments made in then State of Claim as if the same have been set out specifically and mentioned herein and that it should not be taken as any admission on the part of the 2nd Party of the allegations and contentions of the 1st Party's written statement dated 29th December, 2003, each and every contention made in the said written statement which is contrary to the Statement of Claim, except for the typographical error, is hereby denied most emphatically, jointly and severally, unless specifically admitted hereinbelow. As regards preliminary objection raised by the 1st Party in connection with the maintainability of the claim Union and deciding it as a preliminary issue, 2nd Party contended that, the said

objections are irrelevant, mischievous and not sustainable in law and in facts and have been made with the intention of delaying, defeating and denying the rightful claim of the concerned workmen. 2nd Party contended that it is an admitted position that the concerned workmen have been fighting for permanency for last so many years in various Courts and forums and the 1st Party has been forced to protect the services of the present workmen only upon the orders of the Court. Union further submitted that, in the course of the multifarious proceedings in the various courts, including the proceedings in the High Court at the hearing and disposal of the Writ Petition No.78 of 2000, the 1st Party has failed to raise any of the legal objections and submissions made herein and hence the same be struck off their defence and the 1st Party be estopped from raising the same at this late stage and contended that this Hon'ble Tribunal has no jurisdiction to go into the preliminary objections raised by the 1st party being bound by the orders of the Bombay High Court in Writ Petition No.78 of 2000 and 1683 of 1999 and the order of reference of the appropriate Government. It is contended by the 2nd Party Union that at the time of hearing of the writ petition, 1st Party had consented to the order directing the Government to refer the matter to this Hon'ble Tribunal and hence is estopped from raising this issue now before this Hon'ble Tribunal. 2nd Party denied the submissions of the 1st Party that the order of reference being made on the direction of the Court is in contravention of the law. 2nd Party contended that, it had been raising this demand of permanency since years and had given detailed written submissions to the Government with regard to the question of abolition wherein the sham and bogus nature of the contracts had been also dealt with. 2nd Party further contended that, during the pendency of the writ petition it had raised a demand with the 1st Party on 14th June, 2002 regarding the sham and bogus nature of the contract employing those 33 and other workers and to be declared/ treated as permanent employees of the 1st party with retrospective effect from their respective dates on which they started working with the 1st party and thereafter it sent the same to the Deputy Labour Commissioner for conciliation along with the justification of their demands. The Government of India, Ministry of Labour, New Delhi vide its order dated 20-3-2003 referred the same i.e. the present reference, for adjudication. It is also contended by the 2nd Party that the names of these and other workers were mentioned in the said reference, however, due to the present proceedings, the Union deleted the names of the present 33 workmen from the said proceedings. An application for transfer of the said proceedings to this Tribunal has been made so that, both the references can be heard together. Union has also filed a statement of claim on 4-8-2003 before this Tribunal and the 1st Party has been served with a copy of the same but the 1st Party has failed to file its reply. Hence, 1st Party's contention that the only material on the basis of which the Government

came to the conclusion was the order of the Hon'ble Bombay High Court is incorrect on the record and its own knowledge. It also contended by the Union that, it took out the Chamber Summons Nos. 142 of 2002 in Writ Petition No. 78 of 2000 for amendment of the Petition and bringing the demand notice on record and praying for reference of the demands for adjudication which Summons was allowed by the Hon'ble High Court and the 1st Party did not raise any objection to the same being allowed. Hence, the plea of sham and bogus had been raised before the Hon'ble High Court and the High Court applied its mind on the particular facts of the case before referring the same for adjudication. 2nd Party further submitted that, without prejudice to the above contentions, that even assuming whilst denying that the demand had not been raised, it is well settled principle of law that the High Court has the powers to refer any dispute for adjudication in exercise of its powers under Article 226 of the Constitution of India.

(40) With reference to the allegations regarding non joinder of the parties, 2nd Party contended that, the alleged contractors keep changing, it had made the then alleged contractors party to the proceedings in W.P. No. 78 of 2000 but none of them appeared despite being served, no reply was filed by them and hence they are presumed to have admitted the case of the Petitioners and hence their non-joinder is not bad in law and admittedly the said alleged contractors keep on changing hence it would not be feasible to make them the parties to the reference, hence the objection of the 1st Party in this regard is not sustainable in law. Second Party Union contended that all the workmen in the reference are its members, hence Union is entitled to represent them in the present proceedings and the 1st Party has not raised the said objection in any of the previous proceedings taken out by the Union and the same have been made with the mischievous intention of delaying the proceedings. 2nd Party contended that, the Hon'ble Delhi High Court in Writ Petition No. 6540 of 2001 directed the Petitioner to pursue its remedies with the concerned Government, in respect of the circular/letter, which reads as under:

"So far as the circular dated 16-11-1999 issued by the Government of India, Ministry of Labour is concerned the parties are given the liberty to approach the Central Government in accordance with the law for reconsideration of the matter in view of the subsequent decision of the Supreme Court in Steel Authority of India Ltd. (Supra)."

It is also submitted by the Union that, the present workmen are not covered under the said notification which was struck down by the Hon'ble Delhi High Court and the 1st party has misrepresented the order of the Hon'ble Delhi High Court and the judgment of the Apex Court in SAIL. The order of the Bombay High Court order is the correct interpretation of SAIL and in any case, this Hon'ble Tribunal is bound by the same and cannot go into the

correctness of the same. The circular dated 16-11-1999 issued by the Ministry of Labour is still subsisting and the Ministry of Civil Aviation has no jurisdiction to quash the same. Union has not been given any notice of the same and the 1st party is put to the strict proof of the alleged dated 3-7-2002 and the contents thereof, in any case the said circular has not been quashed. Union further stated that, 1st party had filed Notice of Motion No. 169 of 2002 in W.P. No. 78 of 2000 falsely stating that, the circular had been struck down by the Delhi High Court and hence prayed for vacation of the interim orders. 2nd Party filed its reply brining the correct facts on record, however, at the time of hearing 1st party did not press the prayers in its Notice of Motion and hence it is now barred from doing so. It is not true that the contentions of the motion are kept open as contended by the 1st Party. 2nd Party further contended that the 1st party has deliberately and willfully made false statement that the said circular is not in force to avoid paying the wages to the workers as per the directions of the Government. It is contended by the 2nd Party Union that, the circular refused abolition of the contract labour system on the sole condition of payment of wages equal to Basic and DA paid to the lowest category of regular workmen and 1st Party has willfully and deliberately disobeyed the same and the orders of the Hon'ble High Court in Writ Petition No. 78 of 2000 dated 8-2-2000 and 2-5-2000 which were confirmed by the final judgment of the Hon'ble High Court on 16-12-2002 and is now trying to mislead this Tribunal regarding the enforceability of the said circular in order to deprive some poor workers of their rightful wages. 2nd Party stated that the 1st Party filed Special Leave Petition (Civil) No. 5383 of 2003 in the Hon'ble Supreme Court of India challenging the judgment of the Hon'ble Bombay High Court in the present matter which is pending and no interim relief is granted against the present proceedings or payment of wages. 2nd Party contended that, in fact the preliminary objections regarding the jurisdiction of the Hon'ble High Court, in exercise of its powers under Article 226 of the Constitution of India, in directing the Government to make a reference has been taken by the 1st Party in its SLP and said fact has been deliberately and willfully suppressed from this Hon'ble Tribunal. 2nd Party admitted the typographical mistake with regard to the definition of "Air Traffic Service" instead of "Traffic Services" mentioned in para 4 of the Statement of Claim and year of commissioning of Terminal 1A being 1992 instead of 1986 as mentioned in paragraph 5 of the Statement of Claim. 2nd Party denied the allegations of the 1st Party that the concerned workmen are not doing the same and similar work as permanent workmen and that their work is of routine and repetitive nature and state that the same is false as per the records of the 1st party itself and it stated that, the concerned workmen have the requisite skills and are performing the same, similar and identical duties as performed by the permanent workmen deployed in Terminals 1B and 11-A. Union admitted the

contentions of the 1st party made in paragraphs 32 and 46 that the DDG is done twice a week and denied all other submissions and contentions in the said paragraph which are contrary to the submissions and averments made by the 2nd Party. 2nd Party admitted the contentions of the 1st Party made by in paragraphs 33 and 47 of the written statement that, the Airport Manager maintains a record of complaints even during the time when the Engineer-in-charge is on duty. 2nd Party also admitted the averment of the 1st party made in paragraph 47 of the written statement that, Register for Civil Complaints and Requisition Register are one and the same. 2nd Party denied the contentions of the 1st party made in paragraphs 51 and 98 of its written statement that, the contracts are awarded as per rules framed and put the 1st party to the strict proof thereof and production of the said rules with documents and tenders received and the contracts awarded. 2nd Party denied the allegations regarding payment of ex-gratia special allowance to the concerned workmen and contended that, they are being paid the minimum wages and denied that they are not doing the same, similar and identical work as the permanent workers and hence are not entitled to parity in wages. Regarding the discrepancy in the designation of workmen shown as Helpers/Beldars in the order of Reference as being shown as Sewermen as pointed out by the 1st Party in the Statement of Claim 2nd Party submitted that, while these workmen had been appointed as Helpers/Beldars, they are now being made to do the work of Sewermen and this change in their work conditions by the 1st party has been reflected in the statement of claim and the 1st Party submission in this respect in the written statement is mischievous and misleading. 2nd Party denied that it has in any manner tried to enlarge the scope of the present reference. 2nd Party further contended that, the issues raised by it in its statement of claim are germane to the terms of the reference and this Hon'ble Tribunal can go into the same and the same are important and necessary in order to fully determine the issues before this Tribunal and all the contentions, objections, averments contained in the 1st Party's written statement dated 29th December, 2003 are technical objections and it is put to the strict proof thereof and the 2nd Party filed an affidavit in support of its rejoinder at Exhibit U-17.

41. In view of the above pleadings, Issues were framed on 11-11-2007, at Exhibit 53, and on the application of the 1st Party dated 5-2-2008 the said Issues were recasted, at Exhibit 69 which I answer as under:

Issues	Findings
(1) Whether the Contract between Airport Authority of India and Respondents Contractors, is sham and bogus and is camouflage?	Yes
(2) Whether the workmen involved in the reference should be declared as permanent employees of the	Yes

Airport Authority of India?

- | | |
|--|---|
| (2A) If yes, since when? | From the date of reference i.e. 20-3-2003 |
| (3) Whether the workmen involved in the Reference are entitled to get status and benefit alongwith privileges as of permanent workmen as claimed? | Yes |
| (3A) If yes, since when? | From 20-3-2003. |
| (4) Whether workmen involved in the reference are entitled to get directions from this Court to Airport Authority of India to pay them wages and other consequential benefits? | Yes |
| (4A) If yes, since when? | From 20-3-2003. |
| (5) Whether workmen involved in the reference are entitled to get the wages on the basis of equal work and equal pay? | Yes |
| (6) Whether workmen involved in the reference are entitled to get benefits applicable to permanent employees? | Yes |
| (6A) Is reference bad in law? | No |
| (7) What order? | As per Order below |

REASONS:

ISSUE No. 6A :

42. In the Statement of Claim Union has made out the case that, 35 workmen are involved in this reference. Out of them two have left the work and 33 remains. These workmen are working in "civil maintenance work" which is an integral part of regular, permanent and perennial activities of the Airport Authority. According to Union duties carried out by the concerned workmen are of such a nature that, the same can never be severable from main activities carried out by the Airport Authority of India (which will hereinafter be called as "Authority") at various Airports in India. According to Union services rendered by the workers irrespective of their category are of important nature because of continuous flow of passengers and cargo. As far as international passengers are concerned, the nature of duties entrusted to all the workers, including the concerned workmen are of vital importance as the international passengers carry the impression about our country based on the functions of the Airports. Domestic terminal building situated at Santacruz has 2 Terminals which are known as Terminal A, from where the flights of Indian Airlines and alliance Airlines take off and land, and the other terminal is known as Terminal B from where flights

of private airlines such as Jet Airlines, Sahara Airlines etc. take off and land. Terminal IB was constructed prior to 1972 and the permanent employees are carrying out functions of civil maintenance of said Terminal. According to Union in Terminal IB there are 28 permanent workers who are working out the function of civil maintenance of the said Terminal building, whereas Terminal IA which is known as "New Domestic Terminal Complex" which was commissioned in the year 1992, where only contract employees are working and one permanent employee is working on it. 15 Workmen out of them, involved in the reference, who were also party in the Writ Petition No.78 of 2000, who were carrying out the work of Plumbing, Carpentry and masonry and some of them are also working as Helpers. Their work is of continuous nature. They are provided with instruments, materials, apparatus etc. e.g. hack-saw blades, drill bits, screws, nails, hinges, trower belts, L-Drops, Hooks, Door Closers, lamination sheets, aluminum frames of "T" and "L" shapes and of different sizes, ply-wood, fevicol, mirrors, glass, sliding doors, aluminum girders, doors and window frames etc. as required for carpentry work and articles like sand, cement (white and grey), tiles, water proofing compound, sodium silicate, araldite, marbles, granites, cutting blades (for files) etc. required for masonry work and elbows was of different sizes, "T" of different sizes, nipples of different sizes, Unions of different sizes, G.I. pipes of different sizes, C.I pipes of different sizes, C-I(T) of different sizes, C-I Bond of different size, C-I Nani Tapes of different sizes. I.W.C. Urinal tanks, urinal snreaders wash basins, angle cock, pillar cock, bib cock (P.V.C.) (C.P.Brass), P.V.C. connector, C.P. brass connector, urinal waste pipe, and others as described in paragraph 4, at page 4 of the Statement of Claim filed at Exhibit U/3B, are supplied to the workers of the Civil Maintenance and other articles as mentioned at the bottom of para 4 at page 4 of the Statement of Claim are also supplied to Plumbers.

43. According to Union the work of those workers is supervised by the officer of the Authority of the level of Junior Engineer. The workmen employed at Terminal IA are required to work in 4 shifts and some of them are required to work only in general shift. That the workers employed in the category of Carpenters, masons and Plumbers are required to work in General Shift. All these workers are issued necessary entry passes by the Authority. All of them were required to sign attendance register kept in the respective offices. Entire work is being carried out on the premises of the Airport Authority. Union claimed that none of the representative of the so called Contractors supervise their work. The so called Contractors mentioned at page 6 and 7 of the Statement of Claim are not genuine contractors. They are sham, artificial, bogus and mere name lenders. It is paper arrangement made by the Authority to deprive the claim of the workers involved in the reference. According to Union work done by these workers is of permanent and perennial nature and without

them Authority cannot run Airport. The workers involved in the reference and in Writ Petition No.78 of 2000 are continuously working with 1st Party though contractors are changed. So it is prayed that, they be declared as permanent employees of the Authority and directions be given to the Authority to treat them as its regular employees and give them benefits attached to the employees of the Authority.

44. This is disputed by the 1st Party by filing exhaustive reply at Exhibit M-V/11 by raising number of contentions. Amongst them, one of it, is maintainability of the reference and jurisdiction of this Tribunal over the subject matter. According to Authority, order of reference dated 20-3-2003 made by the Government of India, Ministry of Labour, New Delhi to this Tribunal for adjudication of the industrial dispute specified in the Schedule itself is not tenable. In the reference it is recited that, "Central Government was of the opinion that, an industrial dispute existed between the employers in relation to the Management of the Airport Authority of India and their workmen in respect of the subject matter specified in the Schedule". According to Authority, Hon'ble High Court in Writ Petition No.78 of 2000 directed the Central Government to make a reference for adjudication is itself, defective and Hon'ble High Court cannot pass such an order and Central Government cannot make such a reference. Even wording used by the Division Bench of our Hon'ble High Court in its order dated 16-12-2002 is only reproduced by the Central Government while making a reference. It reveals that, the Central Government has not applied its mind which is required to be applied under Section 10 of the Industrial Disputes Act, 1947. According to Authority Central Government must form an opinion that, there exists industrial dispute and so it can refer to the Tribunal for adjudication. Unless and until opinion is formed by the Central Government under Section 10 of Industrial Disputes Act, 1947 relying on report of conciliation authority formed under Section 10 of Industrial Disputes Act, 1947 to whom aggrieved party ought to have approached and said machinery ought to have applied its mind after hearing both and submit failure report in that respect to Central Government on it. But here in this case, no such exercise nor attempts have been made by the Union. Union did not approach Labour Commissioner (C). No opportunity was given to the Labour Commissioner (C) to resolve the dispute and see whether Labour Commissioner (C) can resolve it and if not can submit failure report as happens generally. Even no opportunity was given to the Authority to make out its case regarding dispute referred by the Division Bench of the Hon'ble High Court about the subject matter referred in the Reference. According to Authority the dispute raised by the Union was raised for the first time directly before the Hon'ble High Court and the Hon'ble High Court under Article 226 of the Constitution of India made reference which cannot make a reference. Besides, Central Government had no

material before it to satisfy that, an industrial dispute existed between the parties to exercise its powers under Section 10(1) of the Industrial Disputes Act, 1947. Discretion of the Central Government to make an order of reference is dependent on its satisfaction that an industrial dispute either exists or apprehended. The opinion formed by the Government is only on the basis of the directions given by the Hon'ble High Court in Writ Petition No.78 of 2000. In fact it is not the opinion of the Central Government which has formed after taking exercise under Section 10(1) of the Industrial Disputes Act, 1947 as there was no material before the Central Government for coming to the conclusion that, industrial dispute existed which the condition precedent in forming an opinion as contemplated under Section 10(1) of the Industrial Disputes Act, 1947. It has clearly acted in clear contravention of the provisions of Section 10(1) of the Industrial Disputes Act, 1947. Hence it is submitted that it is not a reference at all under Section 10(1) of the Industrial Disputes Act, 1947. According to Authority Central Government acted in clear contravention of the provisions of Section 10(1) of the Industrial Disputes Act, 1947 and has taken decision only on the basis of the directions issued by the Division Bench of the Hon'ble High Court. Besides, stand is taken by the Authority that, there should be dispute between the Authority and its employees. Admittedly employees involved in the reference are not at all employees of the 1st Party. Unless and they are employees of the 1st party, they cannot be workmen as defined under Section 2(s) of the Industrial Disputes Act, 1947. Since the concerned workmen are not their workmen as defined under Section 2(s) of the Industrial Disputes Act, 1947 and its employees, their dispute cannot be called as industrial dispute. As per Section 2(k) of the Industrial Disputes Act, 1947, since none of the concerned workmen are the employees of the Authority and even it is not the case of the Union that, they are employees of the Authority, Union cannot raise dispute on their behalf. Besides it is contended that, the Union has no proper representation to raise this dispute. Not a single permanent employee of Authority support the industrial dispute of the Union. Since basically it is not the dispute of the employees of the Authority, the dispute referred here for adjudication cannot be treated as, an industrial dispute and this Tribunal cannot decide it. It is also stated by the Authority that Union must show that, the industrial dispute is supported by the sufficient number of employees who are members of the Union and there is support of substantial employees of the Authority or is supported by proper number of permanent employees of the 1st party. According to Authority, not a single employee of the Authority has supported the dispute. Even it is not shown that, who has supported the dispute, how many supports the dispute and whether they are members of the Union? Neither a list of the members of the Union is produced nor copy of resolution passed in the meeting of the Union is produced to show that, a particular number of workers are supporting

the dispute. According to authority, Writ Petition No.621 of 1998 was initially filed by 14 employees who were working at Terminal 2C who prayed to continue them in the employment of the 1st party, and prayed to direct the Respondents No. 3 and 4 to investigate their relationship with the 1st Party, under Section 10 of the Contract Labour Act. At the stage of admission the Hon'ble High Court passed ad-interim orders in terms of prayer clause (e) i.e. to continue workmen concerned in the writ petition till disposal of the said Writ Petition and thereafter by order dated 22-7-1998 they were protected till the disposal of the Writ Petition. It is further stated that, Union can raise dispute on issue of Notification under Section 10(1) of the Contract Labour (Regulation and Abolition) Act prohibiting employment of contract labourers or otherwise as laid down in Clause (5) of para 122 of the judgment passed by the Apex Court in case of Steel Authority of India Ltd. vs National Union Water Front Workers published in 2001 III CLR 349 SC. However, there was decision of Government of India to prohibit employment of contract labourers in the said works. Authority was aggrieved by the part of the said circular where Authority was asked to provide wages consisting of basic pay plus dearness allowances paid to the lowest category of regular employees, to be paid concerned employees. Hence Authority filed Writ Petition in Hon'ble Delhi High Court. In that Hon'ble Delhi High Court while deciding Writ Petition No.6540 of 1999 by its order dated 22-11-2001 gave the liberty to the parties to approach the Central Government, in accordance with the law, for reconsideration of the matter on that point, in view of the subsequent decision of the Apex Court. According to the Authority considering this suggestion, a representation was made to the Government of India, relating to the wages payable to the Contract Labourers who in turn indicated that, the circular dated 16-11-1999 relating to the wages payable to the contract labourers be treated as withdrawn observing that, it had no power to make such recommendations under the provisions of the Contract Labour Act and Central Rules and such type of instructions were issued by the Under Secretary to the Government of India, Ministry of Labour, New Delhi to the General Manager, Labour Commissioner, Delhi. On that Airport Employees Union of India, Kerala filed Letters Patent Appeal in Delhi High Court against the said judgment and order dated 22-11-2001 of the Hon'ble Delhi High Court which was set aside as I FA No. 533 of 2002 in CWP No.6540 of 1999 and that the Division Bench of the Delhi High Court passed an order dated 24-7-2002 observing that, there was no appeal. Against that judgment an order passed by the Hon'ble Delhi High Court one Mr. S. Sivaraman filed SLP No. 4114 of 2003 in the Apex Court which was dismissed by Apex Court by its order dated 31-1-2003. According to Authority, Tribunal cannot decide whether the contract labour in any establishment should be continued abolished or not. It is the prerogative of the Government of India to consider and

decide said point. It is submitted that, this Tribunal has no jurisdiction and this Tribunal cannot decide whether employees working under contract labour can continue in the establishment of the Authority or not. According to Authority, since employees involved in the reference are not the employees of the Authority they cannot be represented through this Union. It is also contended that, since the Central Government acted in clear contravention of Section 10(1) of the Industrial Disputes Act, 1947 and had taken decision only on the basis of the directions of the Division Bench of Hon'ble Bombay High Court made a reference, without application of mind and without following the procedure as laid down under Section 10(1) of the Industrial Disputes Act, 1947 does not require to consider and deserve to reject.

(45) So on the basis of these vital contentions we have to decide this issue as a preliminary issue or as a main issue which goes to the root of the case as well help in deciding the powers of this Tribunal.

(46) As far as jurisdiction of this Tribunal is concerned we have to see, what is the subject-matter of the reference? Subject-matter of the reference is :

- "1. Whether the contract between Airport Authority of India and the respondents contractors, is a sham and bogus and is a camouflage to deprive the workers concerned in the petition of benefits available to permanent workmen of Airport Authority of India?
2. Whether the workers concerned (list attached) in the petition should be declared as permanent workers of Airport Authority of India?
3. What are the wages and consequential benefits to be paid to the workers concerned in the petition?"

As per subject-matter in the reference, Government of India, Ministry of Labour, New Delhi, directed this Tribunal to see whether contract between Airport Authority of India and respective contractors is sham, bogus and camouflage to deprive the workers concerned in the reference and to see whether employees involved in the reference can be declared as permanent employees of Authority and what benefits can be given to them. So as far as subject-matter referred in the reference, is the subject-matter regarding status of the employees involved in the reference who are admittedly working for the Authority. In this reference Government of India, Ministry of Labour, New Delhi, did not refer to see whether, employees of the contractors can be utilized in the establishment of the Authority? This Tribunal is not supposed to decide whether there is prohibition of the employment of the contract labour and it is just and proper, as presumed by the Authority's Advocate? This Court is not asked to decide whether Contract Labour can be prohibited or otherwise in the establishment of the Authority? Definitely it is neither prerogative of this Tribunal nor subject-matter of the reference to decide whether contract labour can be used in

Authority since it is not within the jurisdiction of this Tribunal to decide that aspect and it is not even asked by the Central Government to this Tribunal to decide that point. Before this Tribunal, Authority has raised the question of locus standi of the Government of India, Labour Ministry. Presuming that, Central Government ask this Tribunal to decide whether contract labour can be used in Authority which did not ask this Tribunal to decide. However, in my considered view the question of non-abolition of labour contract or abolition of contract labour in Authority is not raised by Central Government nor it ask this Tribunal to decide whether abolition of contract labour is just and legal?

(47) The contention of the 1st Party Authority is that, reference is made mechanically by the government of India, Ministry of Labour, New Delhi and it has neither discussed on the demand of the Union nor case of the Authority on it, as there was no material before Government to form its opinion either to send the reference or not. Besides, it is ground of the Authority that, since provisions of Industrial Disputes Act, 1947 are not followed, Hon'ble High Court cannot ask Central Government to send reference to this Tribunal. For that if we peruse the order of the Hon'ble High Court which is annexed by the Union with its Statement of Claim. In said order while making reference Hon'ble Division referred judgment of Apex Court in Steel Authority of India, page 122 (1)(a)(2) para 6 and after making reference of the order in Writ Petition No.917 of 1999 dated 9-10-2001 more precisely referring para 26(i to iii) and para 28 of it Hon'ble High Court order to make a reference to the Government of India for sending reference to this Tribunal for adjudication. The wording of the reference is :

- "1. Whether the contract between Airport Authority of India and the respondents contractors, is a sham and bogus and is a camouflage to deprive the workers concerned in the petition of benefits available to permanent workmen of Airport Authority of India?
2. Whether the workers concerned (list attached) in the petition should be declared as permanent workers of Airport Authority of India?
3. What are the wages and consequential benefits to be paid to the workers concerned in the petition?"

In the said order the Hon'ble High Court accepted the position of appropriate Government as the Central Government which was agreed to by both. Here at this juncture the case made out by the Union, that, Authority cannot challenge the decision of making reference of Hon'ble High Court since it agreed to make a reference has no meaning. Wording of the order reveals that, both had agreed for the appropriate Government as the Central Government and not for making reference or for any other purpose. Besides, Hon'ble High Court in its order kept all points open stating that :

"All contentions of the parties are kept open to be agitated before the Industrial Tribunal."

That means, all points which are connected with the subject-matter of the reference are kept open by the Hon'ble High Court and on the basis of that Authority has challenged the decision of the Hon'ble High Court before this Tribunal of making reference. But according to Authority cannot challenge the decision of Hon'ble High Court of making of reference to the Tribunal before this Tribunal. If at all the Authority was not happy with the order of the Hon'ble High Court, it ought to have approached the superior Court on the decision of making reference by the Hon'ble High Court to this Tribunal. But according to me Authority has decided to challenge said which in my opinion is estopped or cannot ask this Tribunal to decide the decision of the Hon'ble High Court in asking Central Government to make a reference to this Tribunal. So on that count this Court cannot make any comment about decision of reference and it cannot set aside the subject-matter sent by the Government of India, Ministry of Labour, New Delhi. Another point raised by the Authority that, Central Government did not apply its mind which was expected under Section 10 of the Industrial Disputes Act, 1947 to make a reference. It is also contended by the Authority that, Union cannot directly approach to High Court and pray to make a reference as happened in this case and cited decision of Gujarat Electricity Board vs Hind Mazdoor Sabha reported in 1995(87) FJR p. 267 SC where reference was made on the joint application of the parties. Authority contended that, Union directly cannot approach Hon'ble High Court and pray to make a reference which is not just and proper. According to Authority Union cannot raise for the first time dispute directly in High Court under Article 136 of the Constitution of India and Hon'ble High Court cannot send it unless provisions of Industrial Disputes Act, 1947 are followed. Again here when Hon'ble High Court has decided to make a reference and when Central Government has decided to make a reference and when Central Government, Labour Ministry, New Delhi, has made it in my considered view this Tribunal cannot go into that aspect and consider the question raised by the Authority about making reference by Central Government as per the directions of the Hon'ble High Court. If at all Authority was not happy with the decision of the Hon'ble High Court or decision taken by Central Government of making reference, it ought to have approached Apex Court as happened in the case of Gujarat Electricity Board vs Hind Mazdoor Sabha (supra). Definitely order passed by the Hon'ble High Court is binding to all. It means that, by that, this Tribunal cannot consider the grievances of the Authority on this point and cannot quash or set aside the reference on that ground alone. According to me reference sent by the Government of India, Ministry of Labour, New Delhi, under directions given by the Hon'ble High Court when is not disturbed by any of the parties, is

the Superior Court of the Hon'ble High Court, I have to observe that, reference is maintainable in the present form and not bad in law.

(48) Authority has challenged the reference on number of other grounds including on ground that, Union has no proper representation. The reference does not comply with the provisions of Section 10(1) of the Industrial Disputes Act, 1947. According to Authority, reference is nonest. Dispute is not between the Authority and its employees which is expected as per Section 2(k) of the Industrial Disputes Act, 1947. According to Authority Section 2(k) of the Industrial Disputes Act, 1947 covers disputes or differences between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of the employment or with the conditions of labour, of any person. According to me if we read the definition of Section 2(k) it reveals that :

"Section 2(k): Industrial dispute means, any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person."

No doubt 1st portion of the definition covers any dispute or differences between employers and employers, or between employers and workmen or between workmen and workmen. It is nowhere stated that, dispute must be between employer and its workmen as tried to convince by the 1st Party's Advocate Mr. Patil. On number of occasions Ld. Advocate for Authority Mr. Patil referred this definition i.e. Section 2(k) of the Industrial Disputes Act, 1947 and submitted that since it is not a dispute between the Authority and its Workmen or it is not supported by the workmen of the Authority it cannot be called as industrial dispute. Even in Written Statement he spent number of pages on it saying that, since it is not a dispute between the Authority and its workmen, it cannot be called industrial dispute under Section 2(k) of the Industrial Disputes Act, 1947. But according to me last portion of the definition which is important and which reveals that, dispute must be of employer and its workmen. At the cost repetition last portion of the definition which is connected with the employment or non-employment or the terms of the employment or with the conditions of labour of any person. At the most Union has to show that employees involved in the reference are covered under the definition of employee. The evidence brought on record and stand taken reveals that, employees involved in reference are working with the First Party. No doubt Authority is denying their status as its employees. But admittedly they are working for Authority is fact. Nature of their relation will be decided in due course. Besides

admittedly employees in the reference are working for the 1st Party. Authority is not disputing it and admitting that, they are working for authority but as contract workers. But the fact is that, they are working for the Authority. It is the case of the Authority that, they are working through Contractors. Hon'ble High Court directed the Central Government to send the reference to this Tribunal for adjudication asking this Tribunal to decide, "whether contract between the Airport Authority of India and the Respondents—Contractors is sham and bogus?" Even on the point of, designation of "Respondents-Contractors" Ld. Advocate for the Authority submits that, Contractors are not made party in the reference and as such reference is bad for non-joinder of necessary party. But it is important to note that, Hon'ble High Court has asked Central Government to make reference using word "regarding contract between Respondents-Contractors and Authority". In the reference there is no status to any party as respondents as worded in the reference. In the reference there is status to the parties as 1st Party and the 2nd Party. So if we apply the analogy pointed out by the Authorities Advocate that, Respondents/Contractors are not made party in the reference has no meaning, as it is not expected by Hon'ble High Court to make Contractors as party in the reference since they were already respondent in Writ Petition No.78 of 2000. Besides it is not the case of the Authority that, there were no contractors, as a party in the Writ Petition and Hon'ble High Court asked the Central Government to make a reference regarding that contract which Union claim as sham, bogus and camouflage. This Court has to decide only whether the said contracts, which are referred in the reference and which were before the Hon'ble High Court in Writ Petition No.78 of 2000 while making reference is sham and bogus?

(49) Authority has made much capital of the proper representation by the members of the Union for making reference relying on citations published in 1961 II LLJ page 436 SC while deciding the case of Bombay Union of Journalists vs. The "Hindu" Bombay. He also refers to the citation published in 1958 I LLJ page 500 SC in case of Workman of Dimakuchi Tea Estate vs. Dimakuch Tea Estate and citation published in 1970 II LLJ page 132 SC in case of Workmen of Indian Express Newspaper Pvt. Ltd. vs. The Management of Indian Express Newspaper Pvt. Ltd. as well as citation published in 1965 I LLJ page 95 in case of Nellai Cotton Mills vs. Labour Court Madurai. He also referred citations published in 2005 II LLJ page 850 of Guwahati High Court in deciding Indian Oil Corp. Ltd. vs. C.G.T.I., Guwahati and citation published in 1977 LLJ p. 377 in deciding case of National Asphalt Products Construction Co. vs. N.M. Kothari. In all these citations no specific yard stick is laid on the number of employees which is expected to support to espouse the cause to count for to make a reference or to pass the resolution to make reference who are on the membership of the Union. Even no any provision is pointed out of Industrial Disputes Act, 1947 to show how much numbers of members are required to pass such

resolution which is legal and just which permits the Union to make reference. Here employees who are involved in the reference says that, they are the members of the Union. It is to be noted that their status is not challenged by the Authority saying that, they are not members of the Union and when Union represents them one has to take it in the liberal way to say that, they have power to ask the Union to fight for them as they are of weaker section. The Authority has not shown any provision where specific number of the members of the Union is expected which required to support to such a resolution to make a reference. Cases referred by the Authority's Advocate shows that, even a member of the Union can even make reference as happened in case of Workmen of Indian Express, 1970 II LLJ page 132 (137) SC. So there no specific number is required to support the resolution empowering the Union to make reference. According to me for want of support of particular number of workmen/members of the Union, the Union cannot be restrained in espousing the cause and make a reference.

(50) On the basis of the lengthy pleadings of both and on the strength of application given by 1st Party dated 5-2-2008 issues which were framed at Exhibit 53 were recasted at Exhibit 69. With number of contentions of the 1st Party it has taken contention that, this reference is not maintainable since this Tribunal has no jurisdiction. Instead of framing separate issue on that on each count I framed issue in the following form which reads as follows :

"Is reference bad in law?"

Which will cover maintainability of the reference as well as jurisdiction of this Tribunal over the subject-matter. As this issue goes to the root of the case it is taken first for decision and discussion. So I answer this issue in the affirmative.

ISSUE NO. 1:

(50A) This issue is concerned with alleged Contractor and the employees involved in the reference. As stated above the employees involved in the reference are claiming that they are working with the Authority but according to the Authority, they are working with the Authority as a contract workers. According to Union actually they are doing work of the permanent workmen of the Authority. Since they have worked for more than 240 days in each year they are entitled to be confirmed. They are doing work of perennial and permanent nature which is the work of the Authority. Civil maintenance work is attended by these concerned workmen. Without them Authority cannot function its activities of running airport smoothly and do its activities in trafficking passengers and cargos. Work of civil maintenance is a must with the help of that work Authority is up-keeping buildings neat, clean and tidy. With the help of these concerned workmen, toilets and bath-rooms are kept neat, tidy and clean. The work of cleanliness is done with the help of these concerned workmen. Water supply is also kept in flow and continuous

which help in cleaning the toilets and bath-rooms. It also supply water to the passengers as well as alliance services which are concerned with the trafficking of goods, and passengers. Without the services of these persons, Airports cannot be run and services cannot be made effective and it cannot availed to the passengers without help of these workers. So it is prayed that, instead of keeping them on the list of Contractors or stamping them as "contract workers" they be regularized and benefit of wages and other benefits which are attached to the permanent employees of the Authority who are doing same type of work be given to them. Whereas case of the Authority is that, they are not employees of the Authority. They are not qualified to post. They were not interviewed nor selected by the Authority. There is no vacancy against their post so that they can be regularized. Since they are not filled in by following recruitment process i.e. by advertising post in the newspaper or calling names from the Employment Exchange, taking interviews, asking them to appear for trade test they cannot be regularized and treated at par with the employees of the 1st Party. If it is done it will lay new way to enter into employment and needed will be deprived who are waiting for opportunity.

(51) Union had also made out the case that, 33 employees involved in the reference, out of them 13 are working at Terminal IA, 18 of Terminal 2C and 2 on outside area of the Terminal in the post of Plumber, Helpers and Beldar. They are doing work which is done by the permanent employees of that type. The work done by them is of perennial nature. They are performing duties not only as that of permanent and perennial nature but also doing duties of essential nature. They are working in 4 shifts, shifts are controlled by Manager Engineering Muster is maintained. Attendance is noted. Salaries are paid as per attendance. However, facilities of permanent employees like leave, salary, bonus are not offered to these workmen. According to the Union, though there are number of Contractors through whom these workers are working and contractor are changed from time and again but these workers remain the same. There were 9 contractors who are mere name-lenders shown on record but actually names of the employees are not changed. It itself shows that, it is paper arrangement done by the 1st Party just to show that, these workers are contract workers and not employees of the Authority. It is also the case of the Union that, all those workers are working at the place of the Authority. Their entry and exist is controlled by the Authority. Their work is also controlled by Authority. Their payments are made by the Authority. However, they are not getting benefits as is given to the permanent employees who are working or attending same type of work.

(52) To show that the concerned workmen are doing the work of permanent and perennial nature and work like permanent employees and must get protection, benefit and must be observed as employees of the Authority. Union

examined its witnesses viz. Prabhat Kumar Bandhopadya at Exhibit U / 70, who on oath states that, he joined 1st party as a Draftsman and worked in the Engineering Department. His deposition is on limited point regarding nature of duties carried out by these workmen involved in the reference. According to him duties attended by these workmen are of permanent, perennial and of regular nature. He states that duties are integral part of the various activities of the Authorities. According to him without said duties the Authority cannot carry out its operations. He states that, civil maintenance work in different areas e.g. Terminal IA, IB, IIA, B & C and in Cargo complex and at Terminal IB and II and Cargo complex where permanent employees are working. They are doing duties as done by permanent workers. The supervision of the said work is made by the officers of the said Department. He states that, for such type of work, done by permanent workers, they are getting wages in the range of Rs.20,000 to Rs. 40,000 per month whereas these workers are getting Rs. 4 to 8 thousand per month. Permanent workers are also getting benefit of H.R.A., Bonus, LTA whereas these concerned workers are not getting any benefit of such types. He states that, these workers are working in 3 shifts and also in general shift. In the cross this witness states that, he deposes as a witness of the union and fight as a representative of the Union. He states that, he is aware that, permanent employees have to pass Trade Test for appointment in the establishment of the Authority and no worker, involved in the reference, have given such a trade test. He also admits that, he has not visited site of contract workers. Then Union examined Pushpa Gopalankrishnan at Exhibit U/71 who is working with workman involved in the reference. He states that, he is working in civil maintenance work which is integral part of the regular and permanent activities of the 1st party According to him services rendered by these workers is of most important nature because of trafficking passengers and cargo. According to him, domestic terminal at Santacruz is having largest traffic in India and there is constant flow of passengers and cargo. He states that, Union made representation to the Government to abolish contract labour system by filing Writ petition No.621 of 1998 and 1683 of 1999, and during pending the decision of the Writ petitions, Hon'ble High Court protected these employees. According to him, earlier 18 workmen were carrying out the work of civil maintenance of Terminal II B while it was functioning and then shifted to carry out work of civil maintenance of Terminal II-C and now are again shifted to Terminal II B. He states that, the work done by them is of continuous, permanent and perennial nature. He states that, instrument like materials, apparatus are supplied, including Hack saw, blades, drill bites, screws, nails, hinges, tower bolts, etc. as per the nature of work and tiles, water proofing compound, sodium silicate and other things are also supplied by the Authority to attend the work of repairs. For plumbing also necessary articles are supplied and with the help of that

these workers are attending said work and maintaining flow of water as well as keep the premises clean and tidy. According to him, these workers are getting low salary though they are doing work of permanent nature and the work which is attended by permanent employees. He states that, Contractors shown are not genuine contractors. They are changed but list of the workers is the same. These workers are engaged in the work of permanent nature and doing work under the supervision of the Management. Their attendance is marked. Their salary is paid as per their attendance and as such they are to be treated as regular employees of the 1st Party. In the cross he admits that, he has no appointment order issued by the Authority. He admits that, he is working as a contract worker but actually working with 1st Party and under the supervision of the officers of the 1st Party. He admits that, Union never complained in Writ Petition No.78 of 2000 that, the contract is sham and bogus. He admits that, workers working with them are qualified to work on which they are working. He admits that, workers working with them are qualified to work on which they are working. He admits that, Contractors were party in the Writ Petition. He states that, Contract was introduced by the Authority to deprive these workers to claim permanency and the benefit of the work which they are doing like permanent workers. He admits that, Union never approached in Writ Petition to direct Contractors to regularize their services. He also admits that, no relief was sought from the contractors by approaching Conciliation Authority. He denies that, contracts are job contractors. According to him, Contractors are labour contractors. He made out the case that, Assistant Manager prepare the wage bills as mentioned in para 22 of his affidavit and accordingly payments are made. Then Union examined Laxman Vithal Mahale at U-72 who states that, he is working with the 1st party as a Plumber and is looking after day to day maintenance of water supply line at Terminal II and external area of (CMD II Sub.Div.IV) alongwith other workmen involved in the reference and 2 permanent workmen and he is doing the work of regular, perennial and permanent nature. He states that, without that work, Authority cannot run its activities and upkeep the airports. He also states that, the union approached the Central Government to abolish the labour contract in that area. He states that, he is working on Terminal II, Apron side and city side area of that Terminal and other buildings situated within the premises of the Airport belonging to the Airport Authority of India and supplying adequate water supply. He states that, area is attended by one of the plumbers i.e. he himself and 3 Beldars. Out of them, two are permanent and are the employees of the 1st Party. According to him, the area on which he is working include Apron area, main floor site, water supply for all Airlines, Online maintenance building, Sahar Police Station, Pump House, Oberoi Flight Kitchen Air Canteen, Plants I and II, Power House I & II, Project office, Petrof Pump, ground service, department traffic, department offices etc. Work

of checking BMC pipe line is also done by him. He states that, they supply water for buildings attached to Terminal II A, II B, & II C. He states that, there work is supervised and controlled by Assistant Engineer and CMD II. He states that, attendance is also marked by Assistant Engineer. He states that, supervision and control is exercised by Assistant Engineer. He states that, his work is under control and supervision of the civil maintenance department of Terminal II which is of perennial, regular, permanent and continuous nature. Maintenance of the Airport is essential and continuous job of work and without it, the Airport Authority cannot operate the Airport and attend flights of various airlines and provide services to the passengers. He states that, work is never checked by the contractors or their representatives and they are directly under the control and supervision of the officers of the Authority. In the cross he admits that, he has no appointment order nor he was interviewed and passed technical examination of plumber. He also admits that, other helpers are also not having appointment orders. He states that, he has no idea whether Government of India refused to discontinue Contract Labour system in plumbing, masonry and carpentry in the establishment of the Authority. He admits that, Union never complained about contractors and complained that, their work is not checked by the contractors. He denies that, Contractor has to decide what type of payment is to be made to these Contractors. He denies that, Contractors which are mentioned by the Authority have engaged these concerned workers. Then Union examined Vashistwah Yadav at U 73 who is also working as a Plumber at Terminal IA at Santacruz alongwith 11 others. He states that, he alongwith 11 others is working at Santacruz and doing the work which is integral part of the regular, permanent and perennial activities of the Authority. He states that, the duties carried out by these workers are as per the directions and instructions given by the officers of the Authority who check their work, attendance and work attended by them. According to him work attended by them is important to run airport and without that work, Authority cannot run the Airport and provide services to the passengers. He states that, at Terminal I B there are around 26 permanent workmen who are carrying out the work of civil maintenance. According to him, same type of work is done by his colleagues who are paid less than the permanent workers. According to him, said work is of regular, permanent and perennial nature. Instrument are supplied by the Authority with the help of said instrument and materials they are doing that work and they are working on the place of the Authority. They are working for the Authority and Authority is benefited by their work. Their work is never stopped and they were never asked not to report on duty for want of work. The work done by him which he is doing with his colleagues is important and without that, Authority cannot maintain the Airport in proper shape and offer services to passengers. The contractors shown are bogus Contractors. They never

supervise their work and check it. In the cross he states that, he has no appointment order of the Authority nor was interviewed by the Authority. He denies that, representative of the Contractors are supervising their work. He states that, work is supervised by the officers of the 1st party. He states that, payment is made by the officers of the 1st party. Against that, 1st party Authority examined its witness by name Jai Prakash Mahesh Yadav at Exhibit MI-86 who was Assistant Manager (EX/Civil). He states that, he joined 1999 as a Junior Engineer and now he is still working at Terminal II. He states that, Authority entered into Operation Management and Development Agreement on 4-4-2006 with M/s. Mumbai International Airport Pvt. Ltd. (which will be hereinafter referred to as "MIAL") having its registered office at Chhatrapati Shivaji International Airport, 1st floor, Terminal I-B, Santacruz (E), Mumbai 400 099. As per the letter dated 2-5-2006 issued by the Authority to MIAL, the effective date of the agreement is 3-5-2006 on the date on which the possession of the Airport was given by the Authority to MIAL for its operation, maintenance, development, constructions, upgradation, modernization, designing, financing, management, etc. for a period of 30 years. According to him as a result of that, the authority is now not concerned with the Chhatrapati Shivaji International Airport and the functioning of it. He states that, the employees on the concerned work were deployed by the contractor for day-to-day maintenance of the water supply in the area and they are doing other maintenance work. The demand of the Union to abolish Labour Contract in civil maintenance is rejected by the Government of India by circular dated 16-11-1999. The same is not challenged by the Union and now Union cannot pray to abolish the Labour Contract in civil maintenance and ask authorities to regularize workers working with the contractors. By circular dated 16-11-1999 Government of India decided not to prohibit the employment of the contract labour in the job of plumbing, masonry and carpentry at their establishment at Chhatrapati Shivaji International Airport. The Writ filed by the Union in challenging the decision of the Government of India, not to prohibit the contract labourers in the job of plumbing, masonry and carpentry at its establishment of CSI Airport on which Hon'ble High Court has not passed any order and as such, the said circular dated 16-11-1999 became final. According to him as per that, the Authority protected the services of the employees engaged on contract basis in that era and since the Government of India decided not to prohibit the employment of contract labour in that era and take services of the contract labourers, he states that, contract labourers are legal. He states that they are supervised by the contractors. Payment is made by the contractors. He denies that, there is supervision by the officers of the 1st Party and payment is made by the Authority as per the work done by the contract workers. According to him, concerned workers are carrying on work under the instructions of the contractors and not of the

Authority. He denies that, the work done by the workers is of integral, perennial and permanent nature and that, Authority cannot work without them and offer facilities to the passengers. He states that, the Authority merely maintains the record in respect of the categories of contract labour deployed by the contractors for the effective payments to the contractors. He denies that, supervision is done by the officers of the Authority and it is checked by it. He denies that, the muster roll is maintained by the officers of the Authority. He states that the Authority is not concerned with the leave application or control of the contract labourers. He also states that Authority is not concerned with the payment of the said workers of the contractors. The concerned workers working on the post of plumbers, masonry and carpentry as well as Helpers and Beldars are required to fulfill job requirements before they are appointed by the Authority. Since none of the concerned workers have fulfilled the said requirements they cannot be regularized. Since there is no sanction to fill post, the Authority cannot consider them to regularize. He states that, Contractors are genuine and contracts have signed before the officer of the Authority. After entering into Labour Contracts with the Labour Contractors, said work is given to them. In the cross he states period of contracts and he referred to the contract of 2001. He admits that, he is not concerned with the contracts. He admits that, page 8 of the bunch of documents dated 13-2-2008 are documents concerned with the Department, however, he cannot comment on those. He is unable to comment on the documents produced by the Union with list dated 25-2-2008. He admits that, Mahale and Perumal are working prior to his joining in 1999. He admits that, tenders are called before accepting the contracts. He admits that, details are supplied to the contractors before calling the tenders. He also admits that, condition of acceptance of the contract is conveyed to the Contractors. He admits that, there is no separate list regarding work which is to be done by permanent employees and work which is to be done by the Contract workers. He admits that, though contractors are changed these two workers are continued. He admits that, water supply is essential and it is of continuous nature. He admits that, water is supplied to other alliance airlines also. He admits that, work of department never stops. He admits that, services of these two workers viz. Mahale and Perumal who are employees involved in the reference are utilized for that purpose. He admits that, contract of M/s. Recna Enterprises dated 6-4-2001 does not provide exact area covered. He admits that, condition laid down by M/s. Intercon in its letter dated 27-9-2008, is beyond scope of contract. He admits that, without valid licence contract cannot be allowed. He also admits that, he has not seen any licence from any contractors during his tenure. He also admits that, contractor was visiting day to day work of the workmen involved in the reference. He admits that, payment is made before him. He admits that, he countersigns the payments. He admits that, name, designation

and payment is mentioned in the wages register. He is unable to state whether same type of wage rules are followed in the payment of permanent workers. He admits that, for issuing Identity Card Police verification is required. He admits that, he has not interviewed any of the employees working in his department. Then Management examined its witness Vishwesh Ravindranath Mule at Exhibit MI/87 who states that, he is working as Assistant Manager (Engineer Civil) at Chhatrapati Shivaji International Airport, Mumbai, (CSIA). He is working there since from 8-2-2005. He states that, he is not knowing anything about said prior to that period. He states that, he is deposing on the basis of the record maintained by the Authority. He states that, Authority entered into Operation Management and Development Agreement on 4-4-2006 with M/s. Mumbai International Airport Pvt. Ltd. having its registered office at Chhatrapati Shivaji International Airport, 1st floor, Terminal I-B, Santacruz (E), Mumbai-400 099. As per the letter dated 2-5-2006 issued by the Authority to MIAL, the effective date of the agreement is 3-5-2006 on the date on which the possession of the Airport was given by the Authority to MIAL for its operation, maintenance, development, constructions, upgradation, modernization, designing, financing, management, etc. for a period of 30 years. According to him as a result of that, the authority is not concerned with the Chhatrapati Shivaji International Airport and the functioning of it. He states that, those, 15 concerned employees are not employees of the Authority and they were never employed by the 1st party, hence is not aware about their designations etc. He states that, 12 employees are working at Terminal IA in civil maintenance which are of contractors. He states that, duties performed by the contract labourers have nothing to do with the main functions of the airport. He states that, no permanent workmen is appointed in civil maintenance department since inception of the operation of Terminal IA for lack of sanction of the post of the competent authority. According to him workmen involved in the reference are not technically qualified in their trade. However, they are deployed by contractors and they are doing work under the instructions of the contractor who has to maintain civil complaints register maintained by CMD. He states that, comparison can be made in respect of the civil maintenance work carried out at Terminal IA with Terminal IIA, IB at Chhatrapati Shivaji International Airport as the nature of the work carried out by them varied from complain to complaint. It is denied that contract workers are entitled to get wages and benefits as are given to the permanent employees. He denies that, the contract workers in the reference are required to regularize in service. According to him, since workers involved in the reference are working under the control of the contractors and since they are not appointed by the Authority, they cannot be regularized as prayed by the Union. In the cross he states that, he is deposing about 12 employees working at Terminal IA in civil maintenance work. He admits that, even permanent employees are

working with these 12 workmen at Terminal IA. He again says that, no permanent workmen is working on Terminal IA. He admits that, 13 workers are attending civil maintenance work. All those workers are employees of contractors. He admits that, civil maintenance work at Terminal IB is attended by permanent employees. He admits that, they are transferred from Terminal IB to IA. He states that, his services are not transferred still he is employee of the Authority. He states that, MIAL is making payment to the contractors after transfer of Airport to MIAL as per the contract dated 3-5-2006. He also admits that these 12 employees are also not transferred to MIAL and payment is not made by MIAL. He admits that, the contract pertaining to 12 employees between Authority and Vini Enterprises does not bear the names those 12 employees. When contract dated 28-2-2003 is shown to him which also pertain to those 12 employees it also does not bear the names of those 12 employees. He admits that, the record like Daily Dedicated Group (which hereinafter is called as DDG,) register is not maintained. He admits that, DDG register reflects what type of work is attended by which workman. He is unable to comment on page 64 to 66 documents produced by the Union on 17-11-2005. He is also unable to comment on pages 220 to 331 of documents produced by the Union with the list dated 17-11-2005. He admits that, the said original document does not bear signature of the contractor. He admits that, he is incharge of Terminal IB of civil maintenance department. He admits that, 12 employees involved in the reference are attending Terminal IA of its civil maintenance work. He admits that, civil maintenance work includes plumbing work, masonry and carpentry work also. He gives procedure in what way complaints are attended. According to him, complaints received from various department which are referred to Senior Manager Civil who decides to which Sub-Division it is to be assigned. Then same are forwarded to the concerned contractors who will attend to the said complaints. Said contractors are called on phone who attend on their calls. He admits that, no such a record is maintained of calling contractors and his attendance on the complaints. He admits that, he has not seen certificates of registration of the Authority or licence obtained by the Contractors. He states that, there is no such licence produced in the proceedings since it is with the contractors. He is unable to state whether, said posts were ever advertised or proper procedure was followed for recruitment of these concerned workmen. He admits that, he never interviewed permanent employees. He admits that, permanent employees are also working as masonry, plumbers and carpenters. Then Management examined Vinay Kumar Tamrakar at Exhibit MI/88. He states that, he is working as Assistant Manager (Engg-Civil) at CSI Airport, Mumbai. He states that, 18 employees involved in the reference were never appointed by the Authority. According to him, Terminal IB was not functioning till 2-5-2006 except for Haj Pilgrims and arrival. According to him

18 employees involved in the reference were initially employed at Terminal II B and on commissioning of Terminal II C they were shifted to Terminal II C. He states that, Authority maintained attendance book for the purpose of payment of the contract workers. He states that, when these 18 workers are attending work, Junior Engineer used to supervise them. This witness states that, he is concerned to Terminal II C and 17 employees involved in the reference. He also admits that, concerned 18 workmen involved in the reference were shifted to Terminal II C. He admits that register maintained by Pushpan does not bear signature of the Contractor at any place. He admits that he used to sign the register in some places. He explains that, he signs to certify the work done by the workers. He states that, as soon as the complaints are lodged he used to call the contractors to attend it or through labour contracts to attend it. He has no evidence on that point of calling contractors and contractors attending the complaints. He admits that, he was doing the work of entering the complaints and the work done by the concerned workman. He also admits that he used to check the said work done by the workers. He admits that, besides 17 other job contract workers, these are also working there. He admits that, there is no signature of the Contractors. He admits that, day to day work is part of civil maintenance work of Terminal II B and Terminal II C. He also admits that, he has not seen licences with Intercon and D'Souza Construction Co. He admits that, Authority used to maintain record to make payment to the contractors. He admits that, he has not seen contracts of M/s. Rosy Wadia and Profesco. The Management examined Dr. Sanda Prasana Choudhry at Exhibit MI/84 and Ashok Kumar Malik at Exhibit MI/90. Evidence of Dr. Choudhry is on technical point and about transfer of Airport to MIAL. Whereas the evidence of Malik is also of technical type i.e. on the point of sanction of post where he states that there is no sanction of post. Besides this Authority request to read deposition of Dr. S.P. Choudhry recorded in Reference No. 44 of 2003 at Exhibit 103 and of Malik Exhibit 110 be read in this reference. So this is the oral evidence led by both parties in support of their respective cases i.e. on the case of contract labours.

(53) Besides this both demanded documents from each others by filing applications dated 5-2-2008 and 13-2-2008 prayed to rely on the copies of the documents produced by them in that context. After hearing both, order was passed on said application on 5-2-2008 and 13-2-2008 observing that, both are aware of the demand of the documents from each other. It was also observed that, they know which documents are demanded by other side and still it is pertinent to note that, most of the documents are not produced by each of them. It was also observed that, since reference is to be disposed off in time schedule given by the Hon'ble High Court, Court did not want to waste its time on it and asked parties to produce the documents. Even my predecessor gave opportunity to both to produce documents which are available with them to

avoid inconvenience and delay. Still by these applications dated 5-2-2008 and 13-2-2008 documents were demanded considering the application filed by the Union and reply given by the Authority lastly Court passed orders observing that, sufficient opportunity is given to both and still it did not utilized it and produced documents and observed that both to show custody and importance of the documents on which Court will draw inference. Now both have to show that, documents demanded are possessed by other side and it is custodian of it. If both succeed in showing that, these documents are relevant, important and in custody of other side, Court will draw inference. However, at the stage of final arguments both were heard and number of documents were referred by both of them. Meanwhile Union filed number of agreements of 1998-99, 2000-2002 and Constitution of Union with list at Exhibit 176 and at Exhibit U/21 respectively. Against that, Management filed number of documents at Exhibit M-1/28, in the form of Xerox copy of the correspondence of forwarding letter as mentioned in the list. Besides, Management filed Xerox copies of a number letters at Exhibit M 65, Exhibit M 76 from Serial No. 1 to Sr. No. 8, including copy of agreement alleged to have been entered in to between Authority and Contractor copy of terms and conditions of contract, copy of vouchers, copy of work order etc. Besides, there is one complaint register which is in original form. Said complaint register shows that, the same is attended to by the workers involved in the reference maintained by the officers of the Authority and certified by the officer of the Authority on behalf of the Management i.e. Authority. As far as this original complaint register is concerned, some of the documents are produced, in the original form, by the Union along other documents. However, Authority object that type of production saying that, one has to see how these originals are with Union when custody of original documents ought to have been with the Authority? Whereas Union's Advocate Shri Kulkarni, replied that, in the Evidence Act source of information or source of document is not material but the evidential value of the document is material one. After all, both have not cited any relevant law or any case law in support of their respective contentions. However, the fact is that original is produced by the Union in a number of forms. Some are on the letter-heads of the Authority. At the beginning the Authority was denying existence of the documents. Even initially Authority was saying that, Xerox copies of the documents of which original ought to have been with the Authority but are not with it, are filed by the Union and those are fabricated and cannot be relied upon. However, no specific case is made out by the Authorities and pointed out, which document or portion of the document is fabricated and which copy of the document is not the copy of the original. Even it is not pointed out what is the change made in the documents produced in the Court and what was original of it? Authorities tried to give number of excuses on it saying that, since these documents are

stolen by the Union and Xerox copies are produced, originals of it must be with the Union. In fact it is the Authority who has to produce the originals to show the Xerox copies are not copies of it which Union have produced. All this was going on between both. From the records it appears that, Union succeeded in obtaining documents from the Authorities. Even it is not denied by the Union. No theft case appears filed by the Authority about alleged theft of documents. Documents which are on the letter-head of the Authority which are in Xerox form and since those are not admitted by the Authority alleging that they are fabricated, but it is not proved which is fabricated portion of it and no specific case is made out on it, in my considered view, we have to presume that the documents brought on record have evidential value and can be relied in the evidence. Union has produced those documents with list at Exhibit U-29, U-31, U-90 A, U-92, U-93. Documents regarding complaint book of the workmen working on Electricity Maintenance Division are produced after referring to MW 2 with Exhibit U-89. Union also produced Constitution of it at Exhibit U-21 and receipt of membership of it with list at Exhibit U-22. Union also produced Complaint Book at Exhibit U-29 of Civil Maintenance Department workmen. Most of the documents are on the letter heads of the Authority.

(54) Against that Management has produced documents with list at Exhibit M-28, with list at Exhibit M-65, M-81, M-85, M-101. Authority also filed original Agreements of 1998-99, 2000-2002 executed and entered into between Authority and Contractor with list at Exhibit 176. So documents produced by both are not seriously challenged by both of them except saying that documents cannot be relied upon. However, looking the documents produced, and looking to nature of the documents produced by the concerned authorities, I have to conclude that, those documents are concerned with the employees involved in the reference.

(55) So this is the evidence led by both. By this evidence Union tried to point out that employees involved in the reference are working for Management. They are under the control of the management. They are supervised by the Management, through their officers and they are paid by the Management. The claim of the Union is that, there is no contractor actually and these employees are working directly under the control of the Management. As far as existence of the contractor from the date of the reference, is concern we find, there is no contractor in existence from the date of reference. Even prior to the date of the reference, there were contract shown on record, but the existence of that contractor is not proved by the Management, except producing the documents of contract. In fact it was the Management who could have called the Contractors in support of their case and ought to show that, there was contractor and those workers were the contractor workers and not the workers of the Authority. In fact burden is on the Authority to show that, those

workers are the contract workers and not the-workers of the Authority. No doubt said burden is not properly discharged by Authority. At the same time, burden was on the Union to show that, these are the Authority workers and not of the Contractor workers. But negative burden that those are not contract workers is not at all expected from the Union to discharge it. On the contrary positive burden is expected to prove which is initially on the Authority i.e. the employees involved in the reference are the employees of the Contractors is on the Authority.

(56) Initially Management was saying that, workers involved in the reference are not concerned with them. They are not supervised by the officers of the Authority. Even initially it was saying that, they are not paid by the Authority. But later on i.e. as the case progressed we noted the development in the attitude and approach of the Authority which go on admitting that they were supervised by the Authority. Their attendance was recorded. Their work was supervised by the officers of the Authority. Even Management started saying that, after the reference since there was no Contractor Management had to supervise their work. Management has to protect the employees as per the directions given by the Hon'ble High Court and since the High Court has protected them and since Management has to pay the wages, Management has to maintain record of their work and on the basis of that payment was made to them. Prior to that case of the Management was that, Contractor was attending to them, making payment to Contractors which was paid to the workers in the presence of the officer of the Authority. However, there is no evidence brought on record of any kind by the Authority to show that, Contractor was attending at any point of time. No evidence is brought on record of any type to show that, the Contractor was supervising the work, or he was making payment to the workers and the Authority was giving lump sum amount of contract to the contractor and out of that contractor was paying the wages to the workers involved in the reference. No any type of evidence is led by the Authority which in fact was in a good position to lead evidence on that point since it was organization and Government undertaking which is also a part of the activity of the Government of India. No evidence is laid by Authority to show that tenders were called or Terms of the tenders were discussed and settled and the contract was accepted by the contractor. It is pertinent to note that, no such evidence is led by the authority and no such record is maintained by the Authority to show how these workers were controlled, supervised or paid by the Contractors to conclude that, they were the employees of the contractors. Against it, case made out by the Union reveals that, there was no actual contract in existence. It is a matter of record that, workers were same but contractors were changed from time and again, assuming that, there was contract which create doubt how it can be? When there is change of contractors naturally contractor will bring his own team. But here Authority

admits that, there was change in contractors but the workers were the same which also give blow to the stand taken by the Authority that, these employees are employed by the contractor and were working for the Authority.

(57) Besides, place of work is important. Admittedly workers are working at the place of the Authority. As per decision referred by Union given by the Apex Court while deciding case of *Ramana Dayaram Shetty vs International Airport Authority of India & Ors.* published in (1979) III SCC page 489 administrative authority is equally bound by the norms of standard procedure laid down by it for others. In the instant case we did not find procedure followed by the Authority and having maintained record to show that, actually there was a contractor and the employees involved in the reference are contractual employees. Then citation referred by Union of Bombay High Court while deciding case of *Hindustan Livers Limited vs Hindustan Lever Employees Union* while deciding Appeal No. 174 of 2001 in Writ Petition No.480 of 1997 observed that, onus of showing that, there was the contract and contractor was engaged is on the employer and if employer fails to discharge it, in that circumstance adverse inference need to draw accordingly. Even citation referred by Union published in AIR 1968 SC page 1413 (*Gopal Krishnaji Ketkar vs Mohmad Haji Latif & Ors.*) shows that, party who possess the best evidence which would through light on issue in controversy if holds back such documents, the Court can draw inference against party who holds such documents. Apex Court observed that, workmen working on daily wages is not supposed to maintain record of his employment. It is employer who has to maintain it to dislodge the complaint of the workmen on the work done by him. Citation referred by Union published in (2006) I. SCC page 106 while deciding case of *R.M. Yellati vs Asstt. Executive Engineer Union*. Citation published in 1998(1) CLR page 1043 reveals that ratio laid down in the case of *Upton India Ltd. vs Shammi Bhan & Anr.* generally principles of Contract Act is applicable to agreement between 2 persons having capacity to contract are also applicable to a contract of industrial employment but the relationship was created as partly contractual in the sense that agreement of service may give rise to the mutual obligation e.g. obligation of the employer to pay wages and the correspondent obligation of the workmen to render services and partly non-contractual at the State as passed by legislation prescribing obligations for the employers towards his workmen. The citation referred by Union of Apex Court while deciding the case of *Silver Jubilee Tailoring House & Ors. and Chief Inspector of Shops and Establishments and Ors.* published in 1973 (II) LLJ page 495 observed that, where employer and employee relationship existed when person employed means working for the State. One has to remove mask and to see the real relations between the employer and employee as observed by the Apex Court while deciding case of *Bharat Heavy Electrical Ltd. vs State of U.P.* published in 2003 (III) CLR page 188. Here if we remove the mask to see really

whether there was a contractor as alleged by the Authority and whether employee at any time worked for contractor? As far as point of contract is concerned if we see the evidence of the Authority we find Authority, has examined Jaiprakash Mahesh Yadav at Exhibit M 1 /86 who gave details how contracts are called and how work is given to the Contractors. Besides, he explained in what manner the notes are maintained and how payment is made. In the cross this witness of the Management admits that, contractors are changed but set of employees is the same. When question was put to him how he contacted the contractors about the work or complaints and how contractors complied? On that he replied that, on the directions of the Contractors employees viz. S.U. Adsul and Nitin Gavit attend for Contractor. But when question was put by the Union's Advocate whether, he has evidence on that point, on which he replied that, he did not have noting on it and admits that, Authority did not maintain such record of this type of conversation. He states that, period of contract was extended and curtailed. But in the cross he admits that, he cannot point out by which documents terms of contract are curtailed or extended. He admits that, work of department never stops including work of supply of water. He admits that terms and conditions laid down in M/s. Intercon contract is beyond scope of contract. He admits that, contract of M/s. Reena Enterprises does not project exact area of work. He admits that, he has not seen the licence of these Contractors. He also admits that, he has no evidence to show that, Contractors are visiting day to day work and checking it. He states that, payment is made before him by the Contractors to the contract workers. He admits that, he countersigns the said payments. He states that, he has seen the wage registers. Then Management witness Vishwesh Ravindranath Mule, examined at Exhibit M/87, also talked about contract and supported the case of the Authority saying that, the work is done with the help of the contractors. When he was cross on that he admits that, even at Terminal 1A with these 12 employees are working which is the work done by the contract workers. He admits that, no permanent worker is working in Terminal 1A. He states that, these employees are attending civil maintenance work who are of contract workers. When contract of M/s. Vini Enterprises was referred to him which is pertaining to 12 employees, he states that said contract does not bear the names of 12 employees for which it is alleged that, Vini Enterprises entered into Contract with the Authorities. Even he was shown contract of M/s. Profesco of 2003 which is pertaining to 12 employees working at Terminal 1A for civil maintenance. He also admits that, original complaint book does not bear signature of the contractor to show that contractor noted the complaint and complied it. He admits that, no record is maintained of entry and exit of the contractor on the premises of the authorities. He admits that, except his word he has no evidence to show that, Contractor attended as per complaints and work is done

by the Contractor with the help of contract workers. He states that, he has seen the licence under Labour Contract Act of contractors. However, he is unable to point out and unable to explain as to why it is not on record. Then Management examined Vinay Kumar Tamrakar at Exhibit MI/88 who has filed affidavit pertaining to Terminal II-B and II-C and 17 employees involved in the reference. According to him said 17 employees are working for M/s. D'souza Construction Co. However, he admits that he has not seen these 17 attending day to day Terminal II-B and II-C. He admits that, register maintained does not bear signature of the contractor anywhere. He admits that, he signs the register at some place. He admits that he signs the said register for certifying work done by the contract workers. He states that, as soon as complaint is lodged he used to contact the contractor but admits that no documents are maintained regarding message given to the contractor. Even he admits that, no such documents are maintained regarding message given to the contractor and the complaint attended by the contractor. He admits that, thereafter he used to verify the work done by the workers. He admits that, he himself and one Taide used to take measurement of the work done by the workers and payment was made to the workers accordingly. He admits that, after completion of the work of said measurement is taken. He admits that, besides these 17 workers other job workers are working on the place of the Airport Authority. When he was shown the original note dated 29-1-2008, on that, he states that, said note does not bear the signature of the contractor. He admits that, he has not seen the licence of M/s. Intercon and M/s. D'Souza Contractors. He admits that, Authority used to maintain record of the payments made to the contractors. He admits that AE&ME are making supervision and checking the work done by these 17 workers. He admits that, he has not seen contractors maintaining the muster roll and duty attended muster of the contractor workers. Then Dr. Sarada Prasanna Choudhury, is examined by the Authority at Exhibit MI/84 who admits that Contractors M/s. Shankar Construction is not on record. All this reveals that, actually there was no contract in existence and contractor in picture as alleged by the Authority. The copies of contracts produced by the Authorities are not proved by calling concern contractors. In fact as stated above burden is on the Authority to produce these contracts and to show that, contracts are there and workers involved in the reference are their employees. But it is unfortunate that, Authorities did not make efforts in that direction to call the contractors as its witnesses and feel it necessary to prove that, there was a contract between Authority and they engaged employees involved in the reference as their employees. Authorities had produced documents with list MI/76 in the form of copies of inviting tenders. However, these copies does not project whether actually such tenders were considered by any contractors. It was nowhere pointed out by Authority whether, such contracts are accepted by the

contractors and they decided to work as per tenders. No acceptance letter is proved or produced of contractor. Besides, it is not shown by the Authority that, tenders of the contractors were accepted and orders were issued and it was served on the contractors. Even it is not proved by the Authorities that, the said contracts have been accepted by the Contractors and they attended the work as per the tenders accepted by them. If we consider all this evidence led by both definitely it will answer against the authority and lead us to conclude that, the contract as alleged by the Authority is not in existence but it is sham and bogus and there was no contractor as alleged by the Authority. Even ratio laid down by Apex Court referred by Union while deciding case of Secretary, Haryana State Electricity Board v/s Suresh & Ors. publish in 1999 (2) LLN page 612 will help sorting out which are real contractors and who are the real in employees of the contractors?

(58) All this reveals that, employees involved in the reference are definitely not employees of the contractors. In this reference 33 employees are involved but none of the contractor has come forth to claim that particular employee belongs to their establishment and they are working for them. So in these premises we have to conclude that, the so called contract between the Authorities and the Respondents Contractors who were parties in the Writ Petition No.78 of 2000 were sham, bogus and camouflage or name-lender contractors. So I answer Issue No.1 that, Contractors referred in the reference are sham. Bogus and camouflage and name- lender contractors and not real one. ISSUE No.2:

(59) From the evidence brought on record by both it reveals that, nature of work attended by these workers is of a perinal or permanent nature. Said work will arise till the Airport continues. There will be that work which will be for ever till the Airport survive and till Authority provide services to the passengers. Besides, work done by these workers is attended by permanent works and in some cases work of this type is attended by the workers involved in the reference only. Work at Terminal IA is attended by workers involved in the reference as no permanent worker is working at Terminal IA. This nature of work of civil maintenance which covers renovation of toilets, floor repainting, painting, plastering and other miscellaneous work to do structural and maintenance and without which Authority cannot run the Airport and provide services to the passengers who are reporting on the Airport. Evidence reveals that from 1992-97 permanent workers are working on Terminal IB whereas employees involved in the reference are working at Terminal IA and Junior Engineer or Assistant Engineer were supervising their work. It shows that, there is no bifurcation or separation in the work to distinguish the status of the workmen, either said is done by contract workers or done by workers of the Authority. Besides there is no any line or demarcation marked out by

the Authorities to show that, particular work is required to be done by the workers of the Authority and the particular work is to be done by the contract workers. Government had permitted contract labour workers and there is no ban for the contract workers in the civil maintenance on the premises of the Airport Authority. Still it does not mean that, Authority is supposed to get work done only from the contract workers or from the workers of the Authority. It is also not brought on record that, Authority pressed with the Government to get sanction the post and the Government has not sanctioned it. No communication is brought on record to show that, it did like that and still their request was not considered by the Government of India. Even it is not the case of the Authority that, it displayed vacancies or called for the names from the Employment Exchange or from any other Authority to fill in the posts. Though Authority was harping in saying that, these are contract workers and by virtue of order given by the Hon'ble High Court, they are protected and work is get done from them does not mean that, they should be instrumented like that for ever. When work is available and evidence reveals that, there is work which is of permanent type and without which Authority cannot run the Airport, one has to presume that, work is of permanent nature and it is rather part and parcel of the Authority. Otherwise if we separate the civil maintenance work from the work of the Authority then, there will be question who will be answerable to any unwanted thing happens because of the lack of maintenance or because of lack of care not taken at the Airport? Unless and until all things are okay i.e. there is adequate water supply, adequate electricity supply, adequate cleanliness, adequate repair, and other things it will not be possible to run the Airport. In this premises in my considered view, work done by these workers cannot be separated from the main functions of the Authority as it is rather equal and important which is supporting with the activities of the Airport Authority. Besides as questioned above, who will be answerable to any unwanted thing happens? So to meet out all that, one has to presume that, it is departmental work which cannot be separated which is tried by the Authority to take advantage of contract labours to utilize their services on the low wages.

(60) It is brought on record that, these workers are utilized on very low wages. It is also brought on record that workers of this type who are involved in the reference are getting Rs 4000/- to Rs. 5000/- per month against that, employees of the Authority who are doing or attending same type of work, are getting Rs 40,000/- to Rs. 50,000/- per month. It is also matter of record that, these workers are concern from 1993. Just authorities had assured that, the workers involved in the reference will be protected and that they will not get less salary than minimum wages. But that is not only the intention in protected the interest of the employees like this. One has to consider what, other

facilities are provided to the workers who are doing same type of work and why these workers are not getting the same facilities and scale as given to the workers who are doing same type of job?

(61) Then there is development during the pendency of the proceedings, MIAL entered into Agreement with the Authority by agreement dated 4-4-2006 by which MIAL took possession of the Airport for operation, management and development, construction, upgradation, designing etc. for a period of 30 years and accordingly as per letter dated 3-5-2006 issued by the Authority and as per that agreement Authority, handed over the possession of the Airport to MIAL for 30 years. As per the case of the Authority its some officers are working on its pay roll and are helping MIAL as per agreement. Officers like Mr. More is still working with the Authority. That means yet some officers are of the Authority and Authority is maintaining record of those officers and paying their salary and that these officers have their offices there. It is not the case of the Authority that, they have closed down all its activities. Moreover, no specific case is made out by the Authority or MIAL who was party in these proceedings before this Court, for some time which was then deleted as per order of the Hon'ble High Court while deciding Writ Petition No. 695 of 2008 (and Writ Petition No. 841 of 2008) filed by MIAL. However, it is important to note that, order passed by the Hon'ble High Court on MIAL's grievance in above Writ Petitions is worth to note. Hon'ble High Court in last paragraph mentioned as follows:

"However, it is clarified that this Court has not expressed any opinion on the merits of the controversy. All contentions of both sides in the Reference are kept open. This Court has merely expressed its opinion on the issue of joinder of Petitioner and it is clarified that no opinion is expressed on the obligation arising out of the Agreement between the Petitioners and the Airport Authority of India as well."

According to me these observations kept scope open to the claim of the workers involved in the reference with MIAL and MIAL cannot run away or Authority cannot raise its hands saying that, it had handed over Airport to MIAL and now Authority is not responsible or concerned with the responsibilities of these workers or MIAL cannot say that, they are not their employees since they are not engaged by MIAL. Here Union's contention is that, these workers are working with the Authority for years together. They are attending work of permanent nature which is essential to run the Airport and without said work or maintenance, Airport cannot be run. When Airport cannot run without work of these workers and when there was no contract or when there is no contractor, one has to presume that, they are the workers of the Authority and after the agreement entered into between MIAL and Authority, they will be employees of the MIAL. As entire activities of the

Airport are now taken over by the MIAL as per agreement dated 4-4-2006 which is between the Authority and the MIAL which is case of MIAL and Authority. One has to note that, when Authority is one of the Undertaking of the Government of India, which has duty bound to take care of the employees of this type of Undertaking and protect their interest. And if employees of this type of Undertaking are left without protection or shelter, it will give rise to unrest in the labour field and will disturb the harmony of the labour atmosphere. So in this situation we have to conclude that, the employees involved in the reference must be treated as employees of the Authority.

ISSUE NO. 2-A:

(62) Now, question will be since when? It is pertinent to note that, this Reference is sent by the Central Government, Ministry of Labour, New Delhi, in 2003. Union approached Hon'ble High Court, Bombay by filing Writ Petition No.78 of 2000. Even there was tense atmosphere on that subject prior to that yet there was no adjudication on that. Now by virtue of reference this Tribunal is adjudicating on this dispute and by this decision, this Court is deciding the relations of the concerned employees with the Authority. Till that there was no any occasion to decide that. Union did not try to get it decided by approaching competent authority but directly approached the Hon'ble High Court. In fact Union ought to have approached Deputy Chief Labour Commissioner (C) who is competent Authority on such points. But instead of doing that, Union directly approached Hon'ble High Court, they spent time there, and then sought directions of Hon'ble High Court where Hon'ble High Court directed Central Government to make a reference and reference is now here as per the directions of the Hon'ble High Court sent by Central Government, Ministry of Labour, New Delhi, to this Tribunal in 2003. As a result this matter is before this Court. So according to me from the date of the reference i.e. from 20-3-2003 we have to presume that, Union channelise the dispute and one has to consider the dispute from that date as it is not proper to consider the claim of workers prior to the date of the reference and so concerned workmen are to be treated as employees of the Union from 20-3-2003.

ISSUE NOS. 3 AND 3A:

(63) When Union succeeds in showing that, they are the employees of the Authority then they must get the status of the permanent employees of it. Besides benefits which other permanent employees of the Authority are getting, these employees must get it. When work of this type is done by the permanent employees of the Authority and same work is done by these workers involved in the reference but these workers are deprived of benefits and privileges for no reason which are extended to the permanent employees of the Authority, in my considered view, workers involved in the reference cannot be deprived of the said privileges and the benefits which are given to

the permanent employees of Authority. So I conclude that, employees involved in this reference are also entitled to get the same benefits and privileges which are given to the permanent employees from 20th March, 2003.

ISSUE NO. 4 & 4A:

(64) Union has demanded pay and wages and consequential benefits at par with the permanent employees of the Authority who are doing same type of work. When employees involved in the reference are doing same type of work which is done by the employees of the Authority and when Authority failed to show that they are contractor's employees and why these employees involved in the reference are not entitled for the same, in my considered view they are also entitled to get pay and wages and other consequential benefits at par with the employees of the Authority who are doing same type of work, from the date of the reference i.e. 20th March, 2003.

ISSUE NOS. 5 & 6:

(65) When these employees are treated as employees of the Authority and not contractual workers and when it is observed that they are entitled to get pay and wages as well as status and benefits at par with the permanent employees of the Authority who are doing same type of work, no question arise to pass separate order saying that, they are entitled to get equal pay for equal work and status of permanent employees. The citation referred by the Authority published in 2006 II CLR SC Secretary, State of Karnataka vs Umadevi and Ors. Does not come in the way of these employees as argued by Union that, said observation is in connection with service matter and not labour service and when Union succeeds in showing that, they are doing work of permanent nature and that the Authority cannot run Airport and same type of work is done by the permanent employees of the Authority in my considered view, they are entitled to get wages and other privileges on the basis of equal work equal pay and permanent status. Accordingly I answer this Issue to that effect.

(66) In view of the discussions made above I conclude that, the reference require to be allowed. Hence, the order :

ORDER

(a) Reference is allowed;

(b) Authority is directed to treat these employees involved in the reference as its permanent employees and give benefits to them at par with its own employees who are doing similar type of work with it, including benefits of wages, with consequential benefits as Permanent employees of the Authority from 20-3-2003.

At Bombay, 26-5-2008.

A. A. LAD, Presiding Officer

नई दिल्ली, 11 सितम्बर, 2008

AWARD

का. अ. 2804.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार रेलवे मेल सर्विस के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/ग्राम न्यायालय भुवनेश्वर के पंचाट (संदर्भ सं 16/2000) को प्रकटित करती है, जो केन्द्रीय सरकार को 11-9-2008 को प्राप्त हुआ था।

[सं. एल-40012/94/2000-आईआर(डीयू)]

अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 11th September, 2008

S.O. 2804.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 16/2000) of the Central Government Industrial Tribunal-cum-Labour Court, Bhubaneswar, as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Railway Mail Service and their workman, which was received by the Central Government on 11-9-2008.

[No. L-40012/94/2000-IR(DU)]

AJAY KUMAR GAUR, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT
BHUBANESWAR

Present : Shri N.K.R. Mohapatra,
Presiding Officer C.G.I.T.-cum-Labour
Court,
Bhubaneswar

Industrial Dispute Case No. 16/2000

Date of Passing Award—28th July, 2008

BETWEEN

The Management of the Superintendent,
Railway Mail Service, SE Railway,
V-Division, Visakhapatnam (A.P.)

...1st Party-Management.

And

Their Workman, Shri T. Ramulu, Ex-RMS
Rest House Attendant, C/o. Akhaya Kr.
Baliarsingh, In front of Andhra Bank, Dist. Khurda.

...2nd party-Workman

APPEARANCES

M/s. R.P. Nanda & ...For the 1st Party-Management
Associates, Advocate.

Shri T. Ramulu ...For Himself-the 2nd Party-
Workman.

The Government of India in the Ministry of Labour, in exercise of Powers conferred by Clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) have referred the following dispute for adjudication vide their Order No.L 40012/94/2000/IR(DU), dated 1-6-2000.

"Whether the action of the Management of RMS, SE Rly, Visakhapatnam in terminating the services of Sh. T. Ramulu, w.e.f. 3-7-1997 is just, fair and legal? If not, to what relief the workman is entitled?"

2. The Railway Mail Service Division, Visakhapatnam was maintaining a Rest House at Khurda Road to provide temporary accommodations to officers on Tour etc. As a watcher of that rest house the disputant T. Ramulu was initially engaged as part time Chowkidar to work for five hours daily with effect from 1-2-1970 and subsequently he was asked to work as Rest House Attendant with working hours from 8 A.M. to 12 Noon and again from 6 P.M. to 8 P.M. daily. On receiving some complaints from the local inhabitants that the disputant is indulged in entertaining outsiders to gamble and drink Alcohol inside the rest house, the Management put him off from duty with effect from 3-7-1997. Claiming that he has been illegally terminated, the disputant raised an Industrial Disputes before the Asst. Labour Commissioner (Central) giving rise to the present reference.

3. The Management alleges that the appointment of the disputant as Chowkidar and subsequently as Attendant was on part time basis terminable at any time without assigning any reason. On the complaint of several local inhabitants that he was entertaining outsiders to gamble and drink Alcohol inside the rest house creating nuisance for the public, the matter was enquired into locally and the disputant was asked to give his explanation and he was put off from duty with effect from 3-7-1997. It is further alleged by the Management that before it could take any final decision in the matter, the disputant raised an Industrial Disputes for which no final order could be passed. In other words it is contended by the Management that its action of putting the workman off from duty is neither bad nor illegal.

4. On the above pleadings of the parties the following issues were framed.

ISSUES

1. Whether the reference is maintainable that the workman has not been terminated by the Management?
2. Whether the action of the Management as alleged by the workman is legal and justified?
3. To what relief the workman is entitled to?
5. Besides examining himself another witness has been examined by the disputant. The Management has

examined three witnesses in support of its case besides producing several documents relating to the preliminary enquiry held against the disputant.

FINDINGS

ISSUE NO. I

6. As to the maintainability and jurisdiction of the Tribunal neither party has of course raised any objection but that does not prevent the Tribunal to examine its own jurisdiction especially when a Postal Departmental have been impleaded as a party erring it to be the employer of the disputant. From the very pleadings of the parties and the nomenclature of the Management it is clear that, the establishments of the Management is a part and parcel of the Postal Department running within the railway premises with a designation Railway Mail Service (RMS). In case of Sub-District Inspector of Posts, Vikram—Versus Theyyam Joseph reported in 1996-II-LLJ 230 a two judge bench of the Hon'ble Supreme Court have held that, function of the postal Department are part of the sovereign function of the State and therefore it is not an industry within the definition of Section 2(J) of the Industrial Disputes Act. Since under exceptional clause 6 of section 2 of the Industrial Disputes Act establishes discharging sovereign function of the State are excluded from the definition of Industry, it is accordingly held that the reference is not maintainable in its present form, the Tribunal not being competent to deal with any subject relating to the Postal Department.

ISSUE NO. II & III

7. These two issues are taken up together for the purpose of convenience.

However, considering for a moment that the Postal Department in which the workman was working was an Industry within the definition of Industrial Disputes Act, I would like to examine other probable consequences of the dispute. Admittedly the workman has produced no documents in support of his permanent appointment either in the post of Watcher or in the post of Care Taker of the rest house. Rather the official documents produced by the Management shows that he was engaged as a part time worker in both the capacities. The other evidence of the Management indicates that, a public complaint was received against the disputant that he used to entertain outsiders to gamble and take alcohol within the premises to the annoyance of the neighbouring inhabitants and then a preliminary enquiry was held by the Management by recording the statements of various inhabitants of the locality and that the workman was also asked to give his explanation. One of the documents produced by the Management also discloses that the workman had admitted his fault in his show cause. The further evidence as adduced by both parties indicates that pending regular enquiry the workman was put-off from duty and that soon thereafter the workman had raised an Industrial Disputes before the Asst. Labour Commissioner (Central) resulting

the same in the present reference. Ext.-AA shows that the order under which the disputant was put-off from duty was intimated to him as his signature as a token of such communication is appearing on such order and as no final order has been passed thereafter terminating the workman his raising of the dispute seems totally pre-matured.

9. Thus in any view of the matter the reference is not maintainable in its present form.

N.K.R. MOHAPATRA, Presiding Officer
C.G.I.T.-cum-L.C., BBSR.

LIST OF WITNESSES EXAMINED ON BEHALF OF THE 2ND PARTY—UNION.

W.W.1—T. Ramulu

W. W.2—Akshaya Kumar Das.

LIST OF DOCUMENTS EXHIBITED ON BEHALF OF THE 2ND PARTY—WORKMAN.

Ext.-1—Order of Supdt. RMS-V Division Visakhapatnam-I to the workman to work as a Watcher from 8 A.M. to 12 Noon and from 6 P.M. to 8 P.M. in the Rest House.

LIST OF WITNESSES ON BEHALF OF THE 1ST PARTY MANAGEMENT

M.W.-1—Shri P. Sivasankaraya.

M.W.-2—Y.S. Prabhakar Rao.

M.W.-3—N.V. Appa Rao.

LIST OF DOCUMENTS EXHIBITED ON BEHALF OF THE 1ST PARTY—MANAGEMENT

Ext.-A—Copy of the rejoinder.

Ext.-B—Engagement Memo issued by the inspector of V-1st Sub-division dated 23-4-1970.

Ext.-C—Reinstated letter No. V-I st/Estt., dated 25-4-1974.

Ext.-D—Letter of Shri T. Ramulu dated 28-4-1989.

Ext.-E—Letter No. PF/T. Ramulu dated 22-3-1989 issued to the disputant.

Ext.-F—Copy of statement of Sh. S.K. Mohanty, Sh. Ramesh Chandra Mohapatra & Shri Kabiraj.

Ext.-G—Copy of letter of Sh. T. Rumulu dated 14-6-1997.

Ext.-H—Copy of letter No. V-3rd/PF/TRL, dated 3-7-1997.

Ext.-J—Copy of statement of Sh. T. Venkateswara Rao, Sh. N.V. Appa Rao, Sh. K. Appa Rao and Sh. Y.S. Prabhakara Rao.

Ext.-K—Copy of letter No. B2/22/TR, dated 7-1-1999 issued to the A.L.C.(C), Bhubaneswar.

Ext.-L—Copy of letter No. 8(105)/98-BBS/B, dated 12-10-1999 of the A.L.C.(C), Bhubaneswar.

Ext.-M—Copy of report of Mail Agent V-14 dated 13-6-1997.

Ext.—N—Copy of report of Mail Agent V-14 dated 14-6-1997.

Ext.—P—Copy of letter No. 29-CL/IV/RJgsVIII, dated 13-3-1995 issued by the Asst. Post Master General, Hyderabad.

Ext.—Q—Original copy of the statement of Shri T. Ramulu.
Ext.—Q/I—Signature of Shri T. Ramulu on the copy of the statement. Ext.—R—Copy of representation of Shri T. Ramulu to the A.L.C.(C), Bhubaneswar dated 22-12-1998.

Ext.—R/I—Signature of Shri T. Ramulu in that representation dated 22-12-1998.

Ext.—S—Complaint of Staff.

Ext.—T—Complaint of staff Shri Y.S. Prabhakar Rao.

Ext.—U—Statement of Shri T. Venkatesara Rao.

Ext.—V—Statement of Shri K. Appa Rao-II.

Ext.—W—Statement of N.V. Appa Rao.

Ext.—Z—Report to the Authority.

Ext.—AA—Order under which the workman was put-off from service with effect 3-7-1997.

नई दिल्ली, 11 सितम्बर, 2008

क्र. आ. 2805.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसार में, केन्द्रीय सरकार दूर संचार विभाग के प्रबंधन के संबद्ध निर्योक्तों और उनके कर्मचारों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/भ्रम न्यायालय, धनुनेस्वर के पंचाट (संदर्भ सं 43/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11-9-2008 को प्राप्त हुआ था।

[सं. एल-40012/27/98-आई आर(डीयू)]

अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 11th September, 2008

S.O. 2805.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 43/2001) of the Central Government Industrial Tribunal-cum-Labour Court, Bhubaneswar, as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Department of Telecom, and their workman, which was received by the Central Government on 11-9-2008.

[No. L-40012/27/98-IR(DU)]

AJAY KUMAR GAUR, Desk Officer

ANNEXURE

**CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT
BHUBANESWAR**

Present : Shri N.K.R. Mohapatra,
Presiding Officer C.G.I.T.-cum-Labour
Court, Bhubaneswar

Industrial Dispute Case No. 1, 43/2001

Date of Passing Award—31st July, 2008

BETWEEN:

The Management of the Asst. Superintendent,
Telegraph Traffic In-charge, Central Telegraph
Office, Rourkela-1, Dist. Sundargarh,
Rourkela-769001.

...1st Party-Management,

And

Their Workman, Late Shri Abhimanyu Sahoo
Substituted by his father Chandramani Sahoo,
Uditnagar, Govt. High School, P.O. Rourkela,
Dist. Sundargarh, Pin-769012.

...2nd party-Workman

APPEARANCES

M/s. S.K. Pattnaik, & ... For the 1st Party-Management
Associates, Advocate.

M/s. N.C. Mohanty, ... For the 2nd Party-Workman.
Advocate.

AWARD

The Government of India in the Ministry of Labour, in exercise of Powers conferred by Clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) have referred the following dispute for adjudication vide their Order No.L 40012/27/98/IR(DU), dated 16-6-1998.

"Whether the refusal of employment of Shri Abhimanyu Sahoo, workman by the Management effective from 6-11-1997, is legal and justified? If not, what relief the workman is entitled to?"

2. The case of the deceased workman Abhimanyu Sahoo, substituted by his L.R.-father Chandramani Sahoo, is as follows in short.

That the disputant workman (since died) was initially engaged by the Management as a temporary Mazdoor to sprinkle water to khas khas from 15-4-1987 to 15-6-1987 and again from 15-4-1988 to 15-6-1988. Thereafter on being sponsored by the Employment Exchange he was given a temporary jobs in March 1990 on monthly wage for supplying water to the staff and officials and from 1996 onwards he was entrusted with the jobs of distributing daks and telegrams in addition to his original jobs of supplying water. For the above purpose he was paid a consolidated amount of Rs. 375/- for the period from March 1990 to April 1995, Rs. 562/- for the period from May 1995 to June 1997, Rs. 750/- for the period from July 1997 to August 1997 and at a reduced rate of Rs. 700/- for the period from Sept. 1997 to Nov. 1997. It is alleged that when the workman raised a protest about such reduced payment for the period from Sept. 1997 to Nov. 1997, the Management took exception to the same and ultimately refused employment

from 6-11-1997 without any advance notice or retrenchment compensation and filled up that vacancy by engaging another person. The disputant being aggrieved by the above conduct of the Management raised an Industrial Disputes and hence the reference.

3. The Management, besides taking several other pleas admitted that the workman was initially engaged as a temporary/part time worker to sprinkle water to khas khas during 15-5-1986 to 15-6-1986, 15-4-1987 to 15-6-1987, 14-4-1988 to 15-6-1988 as also on other works from 15-4-1989 to 15-6-1989 on daily wage basis by the Jr. Telecom Officer, in-charge of C.T.O., an incompetent person to give such engagement, in contravention of the instructions of 1985 not to engage such person. As regards the alleged engagement through employment exchange from March 1990 till the date of refusal of employment on 6-11-1997 it is averred by the Management that from 1985 the disputant was working as a Home Guard and therefore his allegation that he was recruited through employment exchange in 1990 and that he was paid monthly wages and that ultimately terminated from 6-11-1997 are all false and concocted and stage managed. In addition to the above and while questioning the maintainability of the case it is further contended by the Management that the Telegraph Department (Management) is not an Industry in as much as the same comes under the sovereign functions of the State and that therefore the disputant can neither be called as a workman nor he can claim any relief under the Industrial Disputes Act.

4. On the basis of the above pleadings of the parties the following issues were framed

ISSUES

1. Whether the reference is maintainable?
2. Whether the refusal of employment of the workman by the Management effective from 6-11-1997 is legal and justified?
3. If not, to what relief the workman is entitled?

5. One witness each has been examined by the parties. From the side of the disputant five documents have been marked as Ext.-1 to 5 while the Management's documents have been marked as Ext.-A to D and D/1 to D/3, E, E/1 and F.

FINDINGS

ISSUE NO. 1

6. It is a well-known fact, that earlier Post and Telegraphs Department was a composite establishment. But after the formation of Telecom Department the Telegraph Department having been de-linked from the Postal Department was brought under the Telecom Department and that accordingly the Telecom Deptt. has filed the written statement in this case representing the

Telegraph Department, the Management in question. It is well settled in various pronouncement of the Apex Court that Telecommunication Department is an Industry within the ambit of the term "Industry" as defined under the Industrial Disputes Act. Therefore the reference is well within the jurisdiction of the Tribunal for adjudication. This issue is answered accordingly.

ISSUE NO. 2 & 3

7. These issues are jointly taken up as they are inter-dependent.

It is not disputed that the workman was never engaged continuously for 240 days in any year between 1987 to 1989. According to the workman such continuous engagement was made from March 1990 till he was refused employment on 6-11-1997 to which the Management has denied in so-many words. Therefore, the only question that preliminarily needed to be examined is whether the workman has been able to prove his case of continuous engagement since 1990 till the alleged date of termination on 6-11-1997. Besides, to establish a case of retrenchment, he is further required to prove that during a period of 12 months preceeding the date of his alleged termination on 6-11-1997 he had continuously worked minimum for 240 days.

8. In the claim statement it is alleged that on the basis of the interview and on being sponsored by the employment exchange the workman was given regular appointment on monthly wage basis till he was terminated on 6-11-1997. But while deposing before the Court the workman does not whisper that he was given regular appointment on being sponsored by the Employment Exchange. Further he says during cross-examination that he was not issued with any appointment letter. This shows that he was not appointed on regular basis in March 1990 as claimed by him. Further, contrary to the above, he says during trial that for the month from March 1990 to June 1997 he was paid on monthly basis but from July 1997 onwards he was paid Rs. 25 on daily rate basis. This otherwise makes clear the position further that he was never engaged on regular basis but his engagement was on daily rate basis as claimed by the Management. The payment side of the cash book of 1992 (Ext.-D series) which the Management has produced show that in the month of January 1992 for performing the duty in the absence of Chowkidar on 4-1-1992 and 11-1-1992 and for working for four hours as Waterman from 13-1-1992 to 18-1-1992 he was paid @ Rs. 25/- per day and that again for working in place of regular Chowkidar he was paid Rs. 75 in the month of February 1992 and then in the month of May 1992 he was paid Rs. 150 towards 6 days full wages for working for four hours daily for 12 days as a Waterman and thereforer he was paid in August 1992 Rs. 150 for working as Waterman from 11-7-1992 to 22-7-1992 on contract basis. These facts further confirms, as claimed by the

Management, that the engagement of the workman was intermittent and need based but not that it was on regular basis since 1990, as claimed by him.

9. Now coming to the workman's engagement period during 12 months preceeding the date of alleged termination on 6-11-1997, except the oral evidence no cogent documentary proof has been adduced by the workman to establish that during the above period he had worked continuously minimum for 240 days. According to the evidence of the workman he was engaged in delivering letters and Telegrams as a Peon during 1990 to 1997. But from the above discussion it is clear that except working intermittently, sometimes as Waterman and in some other time as a substitute workman, he was never paid for delivering the Telegram or letters. Therefore, the entire case of the workman appears to be a got-up one. He has of-course filed the Xerox copy of a Peon Book for the period 2-5-1997 to 7-11-1997 to show that he was engaged during 1997 to distribute Telegram and letters. But this document (Ext. 4) shows that on 9-5-1997, 17-6-1997, 16-7-1997, 13-8-1997, 16-9-1997 and on 9-10-1997 one internal letter on each of the above dates was entrusted to him to be delivered with the office and except this there is nothing in it about the continuous engagement or about his delivering of the telegrams out side the office. Ext.-F is a letter of the Commandant, Home Guard, Rourkela communicated to the Management on 20-8-2002. This letter shows that the workman was enrolled as a home guard volunteer in the Home Guard organization with effect from 28-9-1995 and that he was discharged from that organization due to his death with effect from 16-7-2000. The letter further indicates that Home Guard Volunteers are sent to assist the police in maintaining law and order as and when required and in addition to that they are also deputed to public and Private Sector offices to perform watch and duty and for performing the above duties they are also paid remuneration as per the scale prescribed. This coupled with the materials available in Ext.-4 thus lead to the inference, in absence of any other documentary evidence, that the workman was engaged to work in the office of the Management intermittently for about six days only during May 1997 to October 1997. There being no other materials to speak about his other engagement during a period of 12 months preceeding the alleged date of termination on 6-11-1997, it is held that the workman has never worked for a continuous period of 240 days prior to his alleged termination.

10. In view of the various discussions made above I find no merit in the various contentions of the workman; and as such the alleged termination can not be held bad for non-compliance of Section 25-F of the Industrial Disputes Act.

11. The reference is answered accordingly with no relief to the workman.

N. K. R. MULLAPATRA, Presiding Officer

LIST OF WITNESSES EXAMINED ON BEHALF OF THE 2nd PARTY—WORKMAN.

W.W.-1—Shri Abhimanyu Sahoo.

LIST OF DOCUMENTS EXHIBITED ON BEHALF OF THE 2nd PARTY—WORKMAN.

Ext.-1—Xerox copies of the appointment orders.

Ext.-2—Xerox copies of the appointment orders.

Ext.-3—Xerox copies of the appointment orders

Ext.-4—Xerox copy of the Peon Book.

Ext.-5 —Xerox copy of petition filed before A. J. C.(C).

LIST OF WITNESSES ON BEHALF OF THE 1st PARTY—MANAGEMENT.

M.W.-1—Shri Ramakanta Ghosh.

LIST OF DOCUMENTS EXHIBITED ON BEHALF OF THE 1st PARTY—MANAGEMENT

Ext.-A — Xerox copy of letter dated 30-3-1985.

Ext.-B — Xerox copy of letter dated 18-10-1984.

Ext.-C — Xerox copy of letter dated 7-11-1989.

Ext.-D — Xerox copy of the payment sheets, Volume-36.

Ext.-DI to D/3-Payment portion of Shri Abhimanyu Sahoo.

Ext.-E — Xerox copy of payment sheet, Volume-37.

Ext.-E/1— Payment portion of Shri Abhimanyu Sahoo.

Ext.-F — Service record of late Abhimanyu Sahoo issued by the Commandant, Home Guard, Rourkela.

नई दिल्ली, 11 सितम्बर, 2008

का. आ. 2806. औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार दूर संचार विभाग के प्रबंधन के संबद्ध निगमों और उनके कर्मचारों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय भुवनेश्वर के पंचाट (संदर्भ सं. 23/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11-9-2008 को प्राप्त हुआ था।

[सं. एल. अगु 1/18/2000-आई आर (डोयु.)]

मन्त्र कृष्ण गोड, डेस्क अधिकारी

New Delhi, the 11th September, 2008

S.O. 2806. — In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 23/2000) of the Central Government Industrial Tribunal/Cum: Labour Court, Bhubaneswar as shown in the Annexure, in the Industrial dispute between the employers in relation to the management of Department of Telecom, and their

workman, which was received by the Central Government on 11-9-2008.

[No. L-40011/18/2000-IR(DU)]
AJAY KUMAR GAUR, Desk Officer

ANNEXURE

THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT BHUBANESWAR

PRESENT

Shri N.K.R. Mohapatra,
Presiding Officer, C.G.I.T.-cum-Labour Court,
Bhubaneswar

Industrial Dispute Case No. 23/2000

Date of Passing Award—30th July 2008

BETWEEN

The Management of the Superintending Engineer,
Telecom (Electrical) Plot No. 92, Sahidnagar,
Bhubaneswar (Orissa). Pin-751001.

...1st Party-Management.

And

Their Workmen, represented through the president,
Orissa Door Sanchar Astai Mazdoor Sangh (BMS),
Sector-A, 219, Mancheswar Industrial Estate,
Bhubaneswar, Orissa-751001.

...2nd party Union

APPEARANCES

Shri R.N. Bhunia ...For the 1st Party-Management
S.D.E. (P&A), Telecom

Shri K.C. Rout, ...For the 2nd Party-Union
President, ODAMS.

AWARD

The Government of India in the Ministry of Labour,
in exercise of Powers conferred by Clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) have referred the following dispute for adjudication vide their Order No.L 40011/18/2000/IR(DU), dated 28-9-2000.

"Whether the action of the Management of Superintendent Engineer, Telecom (Electrical) Department, Bhubaneswar by not regularizing the services of skilled workers (As per annex.) is justified? If not, to what relief the workers are entitled?"

List of the Workmen working under different Contractor
G.M.T.D. Electrical, Bhubaneswar/Puri Telecom
Exchange, Puri

Name of the Workmen Name of the Contractors

1. Ranjan Kumar Barik. M/s. Dubai Electricals

2. Manoj Kumar Panda. -do-

3. Prasant Kumar Rout. -do-

4. Binod Panda. -do-

5. Laxmidhar Gouda. -do-

C.T.T.C., Electricals.

1. Sanatan Subudhi. M/s. Krishna Electricals

2. Aruna Kumar Rout. -do-

3. Bighnaraj Sahoo. -do-

4. Gangadhar Sahoo. -do-

5. Sarat Ch. Nayak. -do-

6. Michu Sahoo. -do-

7. Rajeswar Nayak -do-

Dhenkanal Telecom Colony

1. Ram Chandra Prusty. M/s. Krishna Electricals

2. Barun Behera. -do-

3. Ajay Kumar Sethy. -do-

4. Himansu Nayak. -do-

Dhenkanal Telecom Exchange

1. Dswijabar Sahoo. M/s. R.E. Bhagat

2. Susanta Kumar Pal. -do-

3. Subal Mohanty. M/s. Chatterjee Associates

4. Sridhar Kumar Sahoo. -do-

5. Pradyumna Rout. M/s. R.K. Swain.

Jevpore Telecom Bhawan

1. Amar Kumar Rout. M/s. Dubai Electricals

2. Ashok Kumar Samal. -do-

3. Raghunath Acharya. M/s. Ganesh Electricals.

2. Contending that the above named disputants are working continuously under the Management on jobs continuous and perennial in nature, the Union raised an Industrial Dispute for their regularization before the Asstt. Labour Commissioner (Central) resulting the same in the present reference. It is alleged in the claim statement that these workers were recruited by the Management at different times during 1995 to 1999 on adhoc basis as shown against each and were engaged to work under the direct control and supervision of the Management. It is claimed that the work performed by these workers are of continuous and perennial in nature and it is similar too with that of a regular employee and therefore they need to be regularized considering their continuous engagement from 1995, their said engagement being under different sham contractors.

3. By controverting the above stand of the Union it is averred by the Management in its Written Statement that the works performed by the so-called workman are not continuous or perennial in nature and that the disputants were never recruited nor engaged by the Management as claimed by the Union. As a matter of practice the Management used to carry out certain job on work-to-work contract basis by engaging different contractors from time to time for execution of such work. These contractors are always engaged through competitive tender and therefore the disputants engaged by such contractors have no foot hole to claim regularization.

4. On the basis of the above pleadings of the parties the following three issues were framed.

ISSUES

1. Whether there is any relationship as employee and employer between the parties?
2. Whether the action of the Management by regularizing the services of skilled workers is justified?
3. What relief the workman are entitled to?

5. At the early stage of the proceeding the Union left no stone unturned but in the middle filed a petition to eliminate the names of some of the disputants from the reference and ultimately remained absent and therefore was set *ex parte* on 27-12-2007. The Management on the other hand has examined one Witness besides producing some documents marked as Ext. A to D.

FINDINGS

ISSUE NO. 1 to 3

6. These issues are taken up jointly for easy disposal.

The evidence of the Management shows that for internal wiring, installation of A.C. Machines and for similar other jobs the Management used to engage different contractors on tender basis from time to time as per its requirements and after completion of the work the company supplying the machineries is being given the contract for annual maintenance. It is further deposed that after a contract is awarded, the concerned contractor used to deploy his own man to execute the work and that accordingly some of the disputants might have had worked being deployed by their contractor but were never engaged by the Management for any purpose. To show the genuine engagement of such contractors, the Management has produced the Electrical Licenses granted by the State Electricity Deptt. to two such contractors namely M/s. Krishna Electrical Works and M/s. Dubey Electricals who were engaged by the Management. Ext.-E and E/1, the Returns submitted by Contractor M/s. Krishna Electrical, disclose that some of the disputants were engaged by the above contractors paving the way to believe that the disputants were all contractor labourers. The list of

disputants as supplied by the Government also contains a column indicating that they were engaged by different contractors including M/s. Krishna Electricals to work in different locations of the Management. Therefore, in these circumstances, when no evidence contrary the above has been adduced or produced, the mere stand of the Union that these contractors were sham can hardly be believed. Thus there being no evidence to establish employer-employee relation-ship between the Management and the disputants the later is held to have no right to claim regularization in the establishment of the former.

7. Hence in the result, I hold that there is no merit in the reference or the stand taken by the Union. Accordingly the reference is answered *ex parte* against the 2nd Party-Union and on contest in favour of the 1st Party-Management.

N.K.R. MOHAPATRA, Presiding Officer

LIST OF WITNESSES EXAMINED ON BEHALF OF THE 2ND PARTY—UNION.

The 2nd Party-Union has not examined any Witnesses on his behalf.

LIST OF DOCUMENTS EXHIBITED ON BEHALF OF THE 2ND PARTY—UNION.

The 2nd Party-Union also not exhibited any documents on his behalf.

LIST OF WITNESSES ON BEHALF OF THE 1ST PARTY—MANAGEMENT

M.W.-1—Shri R.P. Toppo.

LIST OF DOCUMENTS EXHIBITED ON BEHALF THE 1ST PARTY—MANAGEMENT

Ext.-A—License for electrical contractor—M/s. Dubey Electricals.

Ext.-B—License for Electrical Contractor —M/s. Krishna Electrical Works.

Ext.-C—Electrical workman's permit to Shri B.R. Sahoo.

Ext.-D—Copy of relevant portion of Rule 45 of Indian Electricity Rules, 1956

नई दिल्ली, 11 सितम्बर, 2008

का. आ. 2807.- औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एम.टी.एन.एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय चं. II मुम्बई के पंचाट (संदर्भ सं सीजीआईटी-2/62 ऑफ 2001) का प्रकाशित करती है, जो केन्द्रीय सरकार को 11-9-2008 प्राप्त हुआ था।

[सं. एल-40012/59/2001-आई आर(डोयू)]

अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 11th September, 2008

S.O. 2807 .—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT-2/62 of 2001) of the Central Government Industrial Tribunal/Labour Court, No. II Mumbai, as shown in the Annexure, in the Industrial dispute between the employers in relation to the management of M.T.N.L. and their workman, which was received by the Central Government on 11-9-2008.

[No. L-40012/59/2001-IR(DU)]
AJAY KUMAR GAUR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

Present : A. A. Lad, Presiding officer

Reference No. CGIT-2/62 of 2001

Employers in relation to the Management of Mahanagar Telephone Nigam Limited

The General Manager
Mahanagar Telephone Nigam Ltd.
Mumbai Charai Telephone Exchange
Thane 400 601.

AND

Their Workmen

Smt. Rema Rajendra Babu
7/7, Sadanwadi, Lake Road,
Opp. Bhandup Police Station
Bhandup (W)
Mumbai 400078.

APPEARANCES

For the Employer : Mr. R.C. Kotiankar
Advocate

For the Workmen : Mr. J.H. Sawant
Advocate

Mumbai, dated 2nd July, 2008.

AWARD

The Government of India, Ministry of Labour by its Order No. L-40012/59/2001/IR(DU) dated 4-5-2001 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following dispute to this Tribunal for adjudication:

"Whether the action of the management of MTNL, Mumbai by terminating the services of Mrs. Rema Rajendra Babu from the services of MTNL, Mumbai is justified? If not, to what relief the workman is entitled?"

2. Claim Statement is filed by the concerned workman at Ex-4 stating that she joined first party as Clerk w.e.f

24-09-1994. She was working under the supervision of General Manager, E-II, MTNL. She also worked with other workmen of first party and was handling record of first party. However she was paid wages through contractor by name M/s. Ravi Enterprises and thereafter M/s. Chamunda Corporation. She worked with first party till 1-2-2000 and her services were terminated from that date. According to her, first party was her employer. She was qualified to work as a Clerk and she was also treated as employee of first party. So she prayed that, she be re-employed with first party and termination effected on her from 1-2-2000 be quashed and set aside.

3. It is disputed by first party by filing reply Ex-6 making out case that, second party is not the employee of first party. She was never appointed by first party. There is no employer employee relation between first party and second party. It is further stated that, she was working with contractor and contractor terminated her services for which first party cannot be held responsible.

4. In the rejoinder Ex-7, workman states that, there is master and servant relation between her and first party. She was getting overtime and other benefits as an employee of the first party.

5. In view of above pleadings, issues were framed by my Learned Predecessors at Ex-8 which are answered as follows :

Issues	Findings
(i) Whether Mrs. Rema Rajendra Babu proves that she was in the employment of MTNL?	No.
(ii) Does she prove that she was in continuous service with MTNL from 24-9-94 till 31-1-2000?	No.
(iii) Whether the management complied with the provisions under Section 25 F of the Industrial Disputes Act?	Does not arise.
(iv) Whether the action of the management of MTNL, Mumbai by terminating the services of Mrs. Rema Rajendra Babu from the services of MTNL, Mumbai is justified?	Does not arise
(v) What relief Mrs. Rema R. Babu is entitled to?	No relief.

REASONS

Issues nos. 1 to 5 :—

6. Second party claim that, she joined first party as a Clerk w.e.f. 24-9-1994. She worked till 1-2-2000. According to her, she worked as Clerk and was handling as well as

maintaining records and registers of first party. Though she was paid through M/s. Ravi Enterprises and M/s. Chamunda Corporation, she was employee of first party and said contractor cannot terminate her services. This is denied by first party saying that, there is no employer and employee relationship between Second party and first party and it cannot be held responsible and liable for second party.

7. To prove that, second party place reliance on her affidavit filed in lieu of examination-in-chief at Ex-25 where she has stated as above. In the cross, she states that, she has no written appointment letter issued by MTNL. She states that, as per directions of MTNL, she was appointed. She has no evidence about directions given by Officers of MTNL to the contractor. She has no evidence to show that, contractor was name lender and that arrangements were made by MTNL to deprive her claim. Then she examined Ram Briksh, R.L., Ram, R.K. Singh, R.C. Mengaji, Balkrishna Bhagve and Popat Pawar. However none of them positively support the case of the second party and able to throw any light to establish the relationship between second party and first party. Against that first party decided not to led any oral evidence an filed purhis Ex-39. On that second party's advocate filed Written Arguments at Ex-40 and case laws with list Ex-42 whereas first party filed written submissions at Ex-41.

8. As stated above, except second party nobody is speaking about relation with first party as employee. Besides second party has not made out case of any type to show that first party appointed her or she worked at the direction of first party or she was on muster roll of first party. Even there is no evidence to show that, second party worked for 240 days continuously in a calendar year to claim permanency with first party. The case laws produced by second party's advocate at Ex-42 has no relevancy with the facts of this case. Unless and until second party establishes employer-employee relationship, in my considered view she cannot claim any relief against first party. Even number of witnesses are examined by second party but she or they unable to establish employer-employee relationship between first party and second party. Besides she demanded inspection of number of documents by application Ex-29 but unable to establish her relationship with first party.

9. So all these reveals that, she is not concerned with the employment of the first party and not employee of first party. So I conclude that, she is not entitled for any relief and answer above issues to that effect. Hence the order :

ORDER

Reference is rejected.

Date : 2-7-2008

A. A. LAD, Presiding Officer

नई दिल्ली, 11 सितम्बर, 2008

का. आ. 2808.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एम.टी.एन.एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 11, मुम्बई के पंचाट (संदर्भ सं सीजीआईटी-2/21/2003 का 21) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11-9-2008 को प्राप्त हुआ था।

[सं. एल-40012/316/99-आई आर(ड.यु.)]

अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 11th September, 2008

S.O. 2808.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT-2/21 of 2003) of the Central Government Industrial Tribunal-cum-Labour Court, No. 11 Mumbai, as shown in the Annexure, in the Industrial dispute between the employers in relation to the management of M.T.N.L. and their workman, which was received by the Central Government on 11-9-2008.

[No. 1-40012/316/99-IR(DU)]

AJAY KUMAR GAUR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

Present :

A. A. Lad, Presiding Officer

Reference No. CGIT-2/21 of 2003

Employers in relation to the Management of Mahanagar Telephone Nigam Limited

The Chief General Manager
Mahanagar Telephone Nigam Ltd.
Telephone House, Prabhadevi
Mumbai-400028.

AND

Their Workmen

1. The Vice President
All India Telecom Employees Union
Line Staff & Group 'D'
B-1, Kanta Apartments, Pant Nagar
Ghatkopar (E)
Mumbai.
2. Shri Laxman Mohan Sonawane
Teen Dongri, Mahatma Phule Nagar
Buddha Vihar Goregaon (W)
Mumbai-400062.

APPEARANCES

For the Employer	: Ms. S.I. Shah Advocate
For the Workmen	: Mr. J.H. Sawant Advocate

Mumbai, dated 4th August, 2008.

AWARD

The Government of India, Ministry of Labour by its Order No. L-40012/31699- (R/DU) dated 5-5-2003 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following dispute to this Tribunal for adjudication :

"Whether the action of the management of Mahanagar Telephone Nigam Limited, Mumbai in terminating the services of the petitioner (Sh. Laxman Mohan Sonawane) with effect from 1st January, 1988 is legal and justified? If not, to what relief the workman is entitled?"

2. Claim Statement is filed by the concerned workman at Ex-8 making out case that, he joined first party as casual labourer from January, 1985 and attended permanent nature of work. He worked continuously. Then he was refused to report on duty from January, 1988. He made representation with first party requesting to permit him to report on duty which was not heard so he preferred to raise an industrial dispute and Assistant Labour Commissioner (C) admitted case of concerned workman and called first party for conciliation and submitted failure report. On that, Central Government refused to make reference. So he approached Hon'ble Bombay High Court under Article 226 of the Constitution of India and by filing Writ Petition No.2872 of 2002 in which Hon'ble High Court directed Central Government to make reference holding work done by concerned workman for more than 240 days is not criteria to deny to the dispute raised by workman. So it is prayed that, refusal of employment from first party w.e.f. January 1988 be set aside with direction to first party to take concerned workman in the employment w.e.f. 1-1-1988 with backwages and continuity of service.

3. This is disputed by first party by filing Written Statement at Ex-11 making out case that, reference is not maintainable as it is made after long time. It is barred by law of limitation. Besides it is stated that, concerned workman does not fall under the definition of 'workman' as he did not work 240 days continuously with first party. There was no evidence from the second party to show that he worked for more than 240 days to claim benefit of protection given in the provisions of Industrial Disputes Act from first party. It is further stated that, Assistant Labour Commissioner (C) has wrongly referred the dispute by submitting failure report and Central Government has rightly refused to make

reference observing that concerned workman cannot be called as a 'workman' since he has not passed the test of completing 240 days in a year. It is stated that, decision given by Hon'ble High Court in directing Central Government to make reference is not just and proper. It is stated that, High Court cannot pass such directions and cannot compel Central Government to make reference as making reference is the prerogative of Government. It is denied that, first party terminated the services of second party workman. It is denied that, first party acted illegal and terminated second party by violating provisions of Industrial Disputes Act. So it is submitted that, prayer prayed by second party deserves to be rejected.

4. In view of above pleadings, issues were framed at Ex-19 which are answered as follows :

Issues	Findings
(i) Whether order issued against 2nd party of termination is Justifiable?	Does not arise
(ii) Whether 2nd party is workman?	No.
(iii) Is the 2nd party entitled for the relief as sought?	Does not arise
(iv) What order?	As per order below.

REASONS

Issue no.2 :—

5. According to first party, concerned workman Sonawane is not its 'workman' since he worked as casual labour. He did not work continuously for 240 days in each calendar year to claim 'workman' of first party and attract protection given under Industrial Disputes Act. Whereas case of the second party is that he joined first party as a casual labour and worked for more than 240 days in each calendar year. According to second party, as a result of that, he is a permanent employee of first party and without following due process of law, has terminated his services which first party cannot.

6. Here second party claim employment with first party saying that, he worked for more than 240 days in each calendar year from 1985 to 1986. However it is disputed by first party saying that he never worked continuously for 240 days in each calendar year to claim as workman and attract provisions of Industrial Disputes Act.

7. It is matter of record that, Assistant Labour Commissioner (C) sent failure report. It is matter of record that Central Government refused to make reference. It is matter of record that, concerned workman approached Hon'ble High Court and sought directions of Hon'ble High Court against Central Government to make reference. It is matter of record that, as per direction of Hon'ble High Court, Central Government made a reference.

8. First party is challenging the status of second party saying that, he did not work for more than 240 days

in each year to claim workman. Copy of the Writ Petition is filed with Ex-20 where Hon'ble High Court has observed that :

“Prima Facie it cannot be said that there was nothing before the appropriate Government to show that workman has not worked for 240 days in the year preceding his termination.”

By making such observation Hon'ble High Court gave directions, to. Central Government to make reference presuming that concerned workman worked more than 240 days in a year to qualify him to claim employment with first party. However before this Court, first party has challenged the status of second party making out case that, second party did not work for more than 240 days in a calendar year and more precisely in the preceding year of termination. Accordingly, first party has made out case to that effect in written statement and more precisely in para 1 of it saying that second party worked 92 days in the year 1985 and 70 days in the year 1986. Against that, second party in his affidavit Ex- 22 did not make out case that, he worked for 240 days in the preceding year of termination. Just he made out case that, he worked continuously. He has not given account of his working days in his affidavit. Besides in his cross he states that, he was employed through one Sawant. He further admits that, one Sharma was making payment of his salary. He admits that, he was doing work of putting cables. He unable to state the name of the officer who restricted him from reporting on duty. He unable to give the year from which he worked with first party. Even he unable to give date on which he took break. Against that, first party led evidence of one H.P. Yadav by filing affidavit in lieu of Examination-in-Chief Ex-23 and submitted that, concerned workman worked only for 92 days in 1985 and 70 days in 1986. In the cross he admits that, second party never worked under him. He also states that, he has no idea about page 24 Ex- 20. Even he unable to state whether second party worked from 1985 to December, 1987. He admits that, concerned workman was terminated without giving notice explaining that since he was not regular employee.

¶ 9. So first party admits that, no notice was given to concerned workman and witness examined by first party states that he cannot comment on Ex-20.

10. If we peruse Ex-20, the documents of second party we find, said are with Ex-20 filed with copy of letter dated 7-8-1997 and copy of service certificates from page 3 to 5. If we peruse those pages 3 to 5 we find those are simple statement given of work done by concerned workman. Said pages have no authentication of any type. Said pages do not bear any seal or signature from any of the officer of the first party. On the contrary page 2 appear a statement of working days given under the thumb impression of concerned workman. It is not clear from where it is collected and produced or who has verified it or who has checked it? Besides page 4 appears copy of Service certificate and it also does not bear seal and authenticated

certificate to accept in evidence. When first party states that, concerned workman did not work for 240 days in each calendar year and more precisely in the preceding year of termination, in that case burden is on concerned workman to show that, he worked for more than 240 days to claim employee and to seek protection of the provisions of Industrial Disputes Act. Citation published in 2008 1 LLJ page 654 Patna High Court, Citation published in 2008 1 LLJ page 492 S.C., Citation published in 2008 1 LLJ 400 Gujarat High Court, Citation published in 2007 1 LLJ page 632 Madras HC, Citation published in 2008 1 LLJ Madras High Court page 43 and citation published in 2008 1 LLJ page 48 Madhya Pradesh High Court observed that, burden is on workman to prove that, he worked for more than 240 days. In the present case, that burden is not discharged by the concerned workman to prove that, he worked for more than 240 days. It is responsibility of the concerned workman to prove that he worked for more than 240 days in each calendar year and more precisely in the preceding year of termination to claim permanency. Besides he states that, payment was made by one Sharma and he was working under one Sawant. It is not explained by second party how Sharma was concerned with M.C.N.L.? Besides he has not brought any authentic evidence to prove that he worked on permanent basis. So I conclude that, concerned workman cannot be called as 'workman' to attract the benefits of provisions of Industrial Disputes Act. So I conclude that, concerned workman cannot be called as the 'workman' of first party.

Issues Nos. 1 & 3 :—

11. When concerned workman failed to prove that, he worked for more than 240 days in a calendar year to claim permanency, legally he cannot be protected by the provisions of Industrial Disputes Act. As per Section 25 (F) if a permanent employee is to be terminated, management has to follow procedure as per the provisions of Industrial Disputes Act. However in the instance case, second party failed to establish that, he was permanent employee of the first party or he can claim permanency or he can claim permanency by virtue of working more than 240 days in a calendar year. In this case, in my considered view, question of following provisions of Industrial Disputes Act does not arise. In this case admittedly said procedures are not followed by first party. If second party establishes that, first party did not take any legal steps which it ought to have when second party failed to establish that, in my considered view question of following procedure as per provisions of Industrial Disputes Act and considering relief for second party to reinstate with backwages does not arise. Moreover alleged termination is of 1986 which is challenged in 2003. No doubt there was writ petition also and on that basis reference was made. The reference appears made as per directions of Hon'ble High Court in 2002 about the action not taken by Central Government in 1999. So if we considered all that coupled with case made out by both, I conclude that, second party is not entitled to any relief. So I answer these issues to that effect.

12. In view of discussions made above, I conclude that reference deserves to be rejected. Hence the order :

ORDER

Reference is rejected.

Date: 4-8-2008

A.A. LAD, Presiding Officer

नई दिल्ली, 11 सितम्बर, 2008

का. आ. 2809.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बी.बी.एम.बी. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं. 1, चण्डीगढ़ के पंचाट (संदर्भ सं. 77/1995) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11-9-2008 को प्राप्त हुआ था।

[सं. एल-23012/4/1995-आई आर(सी-II)]

अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 11th September, 2008

S.O. 2809.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 77/1995) of the Central Government Industrial Tribunal/Labour Court, No.1 Chandigarh, as shown in the Annexure, in the Industrial dispute between the employers in relation to the management of BBMB and their workman, which was received by the Central Government on 11-9-2008.

[No. L-23012/4/1995-IR(C-II)]

AJAY KUMAR GAUR, Desk Officer

ANNEXURE

BEFORE SHRI GYANENDRA KUMAR SHARMA,
PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I,
CHANDIGARH

Case No. I.D. 77/95

Sh. R. K. Singh Parmar, President Nangal Bakra Mazdoor
Sangh (INTUC) Nangal Township, Dist. Ropar.

...Applicant

Versus

The Chief Engineer, BSL/BBMB, Sundernager, Distt.
Mandi (H.P.)

... Respondent

APPEARANCES

For the workman : Sh. R.K. Singh.

For the management : Sh. R.K. Rana.

AWARD

Passed on 4-9-2008

Central Government vide Notification No.L-23012/4/95-IR (C-II) dated 30-8-95 referred the following industrial dispute for judicial adjudication :

"Whether the termination of services on account of abandonment of job of the workmen Sh. Balbir Singh, Gulzar Lal, Bikram Singh, Subhash Chand by the management of B.B.M.B. rep. by Chief Engineer BSL/B.B.M.B., Sunder Nagar w.e.f.29-1-82, 21-7-80, 24-2-82 & 26-11-79 respectively is covered under the definition of retrenchment as defined under Section

2(00) of I.D. Act? If not, to what relief the workmen are entitled to and from what date?"

I have gone through the statement of claim, written statement and other materials on record. This reference was hotly contested by the management of B.B.M.B. with the avowment that the termination of all the 4 workmen from the service does not fall within the purview of the definition of retrenchment under Section 2(00) of Industrial Disputes Act. But after 12 years, in one fine morning, the management of B.B.M.B. moved an application for filing additional evidence on the ground that all these workmen have been given retrenchment compensation before their termination from the services. The original letters and their copies regarding the retrenchment compensation were also filed. The workmen have admitted that they have received the retrenchment compensation but have challenged the right of the management for filing additional evidence. It was such evidence which affects the very foundation of this reference accordingly, considering the nature of evidence, I am bound to go through the evidence filed by the management of B.B.M.B.

Thus, for the purpose of this reference only, I am of the view that by its act and conduct, the management of B.B.M.B. has put the answer to this reference in the mouth of the Tribunal by stating that the management of B.B.M.B. has paid the retrenchment compensation to all the four workmen named in the reference. Undoubtedly, the retrenchment compensation can be paid only to a retrenchee and the workmen have not denied it that they have not received the retrenchment compensation. They have objected for filing the additional evidence so late. Thus, at the cost of repetition, for the purpose of answering this reference, I am of the view that Tribunal has to do nothing as by way of conduct by giving the retrenchment compensation to the workmen, the management of B.B.M.B. has accepted them as retrenchees.

The workmen as retrenchee have received the retrenchment compensation well in time. So, they are not entitled to any relief. This reference is accordingly answered. Let the Central Government informed. File be consigned.

G.K. SHARMA, Presiding Officer

नई दिल्ली, 11 सितम्बर, 2008

का. आ. 2810.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय खाद्य निगम के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं. 1 चण्डीगढ़ के पंचाट (संदर्भ सं. 55/1992) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11-9-2008 को प्राप्त हुआ था।

[सं. एल-22012/39/एफ/1992-आई आर(सी-II)]

अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 11th September, 2008

S.O. 2810.—In pursuance of Section 17 of the

Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 55/1992) of the Central Government Industrial Tribunal-cum-Labour Court, No. 1 Chandigarh, as shown in the Annexure, in the Industrial dispute between the employers in relation to the management of FCI and their workman, which was received by the Central Government on 11-9-2008.

[No. L-22012/39/F/1992-IR(C-II)]

AJAY KUMAR GAUR, Desk Officer

ANNEXURE

**BEFORE SHRI GYANENDRA KUMAR SHARMA,
PRESIDING OFFICER CENTRAL GOVT.
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I,
CHANDIGARH**

Case No. I.D. 55/92

Sh. Chandra Paul S/o Sh. Hari Singh, R/o Ladhoh, P.O. Ladhoh, Teh and District Rohtak-124001

...Applicant

Versus

The District Manager, Food Corporation of India, District Office, Rohtak-124001

.....Respondent

APPEARANCES

For the workman : Sh. Hardayal Singh.

For the management : Sh. Parmod Jain.

AWARD

Passed on 3-9-2008

Government of India vide Notification No. 22012/39/F/92-IR (C-II) dated 9-6-92 referred the following industrial dispute for judicial adjudication :-

"Whether the action of the management of FCI District Office, Rohtak in terminating the services of Sh. Chander Paul Singh w.e.f. 1-10-90 and not giving the preference of employment in terms of Section 25 of the Industrial Disputes Act, 1947 after the retirement of the regular Driver of the staff car is just? If not, to what relief the workman concerned is entitled to and from what date?"

This reference was referred by Central Government, Ministry of Labour on account of failure of reconciliation proceedings in the office of reconciliation officer (RLO) Chandigarh. Two points are to be determined by this Tribunal, firstly whether the termination of Sh. Chander Paul Singh, workman w.e.f. 1-10-90 is legal and justified and secondly, whether the action of management not giving the preference of employment after the retirement of the regular Driver of staff car is just, fair, legal and regular?

The workman, in his statement of claim has alleged that he was initially appointed as Watchman through the Aman Security Detectives, Chandigarh vide their officer letter No. ASI/ROK/5/89 dated 5-5-89 by the District Manager, FCI Rohtak. Whenever, the regular Driver of the corporation remained on leave, the workman used to perform the duties as a car driver as he was having a valid Driving Licence. Later on, the agreement with the Aman Security Detectives, Chandigarh was terminated by the management

and the applicant started working as car driver with the FCI, Rohtak. He remained in the service of District Manager, FCI Rohtak up to 30-9-90, but he was paid salary for the month of May, 1989 only. The wages for the period of June, 1989 to September, 1990 have not been paid by the management of the corporation of India. His services were terminated arbitrarily without any notice and retrenchment compensation on 1-10-90. On number of times, the workman requested the management of FCI to provide him the job but of no use. He also gave an application to the Regional Office, Food Corporation of India, Chandigarh for regularization of his services against an existing vacancy in response to their letter No. Estt. I (7)/89/54 dated 8-1-90, but nothing was heard. He was maintaining the log book of staff car No. HYC-1903 and has also put his signatures on it. The log books are in the custody of the District Manager, Food Corporation of India, Rohtak. He has completed 240 days of work with the management of respondent and his termination is illegal. At the time of the retirement of the Driver, he should have been given the preference but it was not given to him. Thus, the act of the management is illegal and void and he is entitled for his reinstatement into the services of the management with full back wages.

The management of FCI filed the written statement and raised a preliminary objection that there is no relationship of master and servant between the workman and the management of FCI. The applicant was under the employment and control of M/s. Aman Security and Detectives, Chandigarh throughout and he was not in the service, of the management of FCI, as per Clause 4 and 5 of the contract entered in between the management, of FCI and M/s. Aman Security and Detectives, Chandigarh.

The management of FCI also denied that he drove the staff car of District Manager. It has been stated that fraudulently, he has put on his signatures on the log book in connivance with any of the Class IV employee of FCI and has put in his signatures on the attendance register, vide letter No. Estt. I (7)/87/54 dated 8-1-90, options were called for from all the Class IV employees of the FCI for their recruitment as Driver on the basis of the terms mentioned in the letter itself. The applicant also applied but his application was not considered as he was not under the employment of FCI but under the M/s. Aman Security and Detectives, Chandigarh.

Management of FCI has also alleged that the entire payment has been received by the workman applicant from the agency and sometimes in different names. For proving the fact that he has received the wages from the agency in different names, management of FCI appointed a handwriting expert specialized for giving reports on the signatures which were marked as X-1 and X-6 on record. The original report of handwriting expert is on record and he was also subjected to cross-examination by the expert of the workman.

FCI has filed certain documents apart from this X-1 to X-6, the disputed signatures. Paper No. 47 mark II is the attested copy of the agreement entered in between the management of Food Corporation of India and the M/s. Aman Security and Detectives (Regd.) Chandigarh. Clause 4 of this agreement, which is admitted to both of the parties, is as follows :

"The Security Guards will not be entitled to any FCI benefits and will have no claim of that fact at any time."

Clause 5 of the agreement reads as under :

"That all liabilities arising out of ID Act or other labour enactments will be borne by the security agency being principle employer."

Ex. M2 is the circular letter of Food Corporation of India regarding filling up one post of Driver Grade II from the eligible departmental candidates. Ex. M1 is the application made by the workman Chander Paul on prescribed performa as desired by Food Corporation of India vide its circular letter Ex. M2. In this letter, in sub-clause 2 of Clause 7, which is related to the experience, the applicant Chander Paul has specifically mentioned that he is working in Food Corporation of India District Office, Rohtak through M/s. Aman Security and Detectives from May 1989 and his services are being used as staff car driver usually as and when the regular Driver goes on leave. This application is written by Sh. Chander Paul after 8-1-90 i.e. the date of issuance of circular letter inviting the applications for one post of Driver Grade II from the eligible departmental candidates. Mark I is the copy of handed over charge certificate by the Driver of the management respondent Sh. Sant Lal on his superannuation from the service on 28-9-90. Original report of Expert, along with the photograph are also on record. Disputed signatures on the salary statement for the month of May, June and July are also on record. The log book or departmental car No HYE-1903 is also on record. I have gone through the oral and documentary evidence of the parties."

It is admitted by the workman that from June, 1989, he was appointed with the Food Corporation of India through M/s. Aman Security and Detectives, Chandigarh. It is his statement that, thereafter, his services were terminated by the contractor and he became the direct employee of the management of Food Corporation of India. But he failed to prove that from what date he was directly engaged (appointed) by the management of Food Corporation of India. Ex. M1 which is the document of Sh. Chander Paul to which he admitted in his oral evidence that he applied for the post of the Driver in reference, to the letter of the management No. Estt./1(7)/89/54 dated 8-1-90 for his appointment as a regular driver. There is no date on this application but certainly, this application is given after 8-1-90 the date which the circular letter regarding filling up one post of Driver, Ex. M2 came into existence and circulated to the employees. In this very letter, Ex. M1, the workman has accepted as follows :

"I am working in Food Corporation of India, District Office Rohtak through M/s. Aman Security Services from May, 1989."

Thus, the admission of the workman that from May, 1989 till the writing of this application he was working with the management of respondent FCI, Rohtak through Aman Security Services. Thus, his application was rightly rejected by management of FCI on the ground that he was not a departmental candidate as per the Clause 4 and 5 of the

agreement entered between Food Corporation of India and the Aman Security and Detectives.

Thus, there is no question of priority to be given to the workman at the time of appointment of a regular Driver on superannuation of regular Driver. Sant Lal on 28-9-90, as this appointment was to be made from the eligible departmental candidates and admittedly. Up to the time of starting the procedure of appointment. The workman was not the departmental candidate of the FCI, but engaged through M/s. Aman Security and Detectives, Chandigarh.

It is the workman who has to prove that he has worked for 240 days proceeding to the date of his termination from the services. It is admitted case of the workman that up to January, 1990. He was working with the management through M/s. Aman Security and Detectives, Chandigarh. Under such circumstances, burden lies on him to prove as to when and from what date he became the direct employee of the management of FCI. He has utterly failed to prove it because there is no evidence on record to prove that he was directly engaged by the management of FCI. Only the log book is filed by the department containing the signatures of this workman. The workman has admitted that while working as a security guard, he used to work as a driver as and when the regular driver goes on leave even at the time when he was appointed with the management of FCI through M/s. Aman Security and Detectives, Chandigarh. Thus, it is a matter between all officer of the management of FCI and the workman that the officer permitted a guard to drive the vehicle and by this concession, for which the officer concerned may be liable personally, it cannot be said that the workman became the direct employee of the management of FCI. Thus, on perusal of all the materials on record, I am of the view that there is no evidence on record that the workman served with department as the direct employee and there was a relationship between the management of FCI and the workman that can be termed as 'employer-employee relationship'. His employer was M/s. Aman security and Detective, Chandigarh and on his engagement by M/s. Aman Security and Detectives, Chandigarh, he was working with FCI.

There is one more controversy between the parties regarding the payment of wages. The management of FCI has tried to prove that the workman received the wages sometimes in the name of different persons. To prove this contention, management has filed the original record along with report of Handwriting Expert. The Handwriting expert was also cross examined by learned counsel for the workman. In my view, it is not proper for this Tribunal to comment on this controversy being beyond the reference.

I am adjudicating this reference with the finding that Chander Paul Singh. The workman was never appointed by FCI and there was no relationship of employer and employee in between the FCI and Chander Paul Singh. For the reason recorded in the body of this Award. I am also of the view that Chander Paul was not entitled for any preference in the matter of appointment of a Driver to be made out of the Class IV departmental candidates. Let Central Government be informed. File be consigned.

G.K. SHARMA, Presiding Officer

नई दिल्ली, 11 सितम्बर, 2008

का.आ. 2811.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एम. सी. एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, भुवनेश्वर के पंचाट (संदर्भ संख्या 432/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11-09-2008 को प्राप्त हुआ था।

[सं. एल-22012/293/2000-आई आर(सीएम-II)]

अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 11th September, 2008

S.O. 2811.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 432/2001) of the Central Government Industrial Tribunal-cum-Labour Court, Bhubaneswar as shown in the Annexure in the Industrial Dispute between the management of Kalinga Area of MCL, and their workmen, received by the Central Government on 11-09-2008.

[No. L-22012/293/2000-IR(CM-II)]

AJAY KUMAR GAUR, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL CUM-LABOUR COURT,
BHUBANESWAR

PRESENT

Shri N. K. R. Mohapatra,
Presiding Officer, C.G.I.T.-cum-Labour Court,
Bhubaneswar.

Industrial Dispute Case No. 432/2001

Date of Passing Award—11th August, 2008

BETWEEN

The Management of the Chief
General Manager, Kalinga Area of MCL,
At./Po. South Balanda, Angul.

... 1st Party-Management

And

Their Workmen, represented through the
General Secretary, Talcher Koila Khani
Mazdoor Sangh, At./Po. South Balanda,
Angul.

... 2nd Party-Union

APPEARANCES

Shri A.K. Padhy,	...	For the 1st Party-
Personnel Manager,		Management
Shri M.C. Nayak,	...	For the 2nd
		Party-Union

AWARD

The Government of India in the Ministry of Labour, in exercise of powers conferred by Clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) have referred the following dispute for adjudication vide their Order No. L-22012/293-2000-IR(CM-II), dated 21-11-2001.

"Whether the action of the Management of Kalinga Area of MCL in not promoting S/Sh. K.K. Parida, D.C. Jena, U.C. Acharya, P.K. Rout, J.K. Samal, T.K. Chatopadhyay from Dumper Operator Gr. B to Gr. A Excavator Dumper Operator with full back wages w.e.f. 1-4-1996 is legal and justified? If not to what relief the workmen are entitled to?"

2. It is alleged by the 2nd Party-Union that during 1995-1996 the disputants in question were all working as Operator, Grade-B under the Management. As per necessity they were also authorized to operate high grade Dumpers usually operated by Grade-A Operators and had accordingly gained necessary experience as pre-condition for their promotion to Grade-A Operator. But while considering such promotion the Management promoted their juniors namely B.B. Mahalik, P.K. Jena, P.P. Das, Y.K. Mohapatra and many others with effect from 1-4-1996 and onwards. Claiming these disputants have been vindictively deprived of their promotion, the Union raised an Industrial Disputes for their promotion as Grade-A Excavator Dumper Operator with effect from 1-4-1996. Hence this reference.

3. The Management on the other hand alleged that there is no post like Group-A Excavator Dumper Operator to which the disputants can be promoted. There is of course some posts called Excavation Grade-A Senior Dumper Operators coming under a separate service Rules and as such the claim of the workman for their promotion to that grade with effect from 1-4-1996 is also not otherwise tenable. It is further added by the Management that even otherwise the disputants are not eligible to be promoted from Grade-B to Grade-A Dumper Operator with effect from 1-4-1996 as by then they had not acquired necessary qualification as prescribed by the J.B.C.C.L. According to the guidelines of J.B.C.C.L., to be promoted to the rank of Grade-A Dumper Operator, one is required to work as Dumper Operator for a minimum period of 8 years and the disputants having not acquired that qualification by 1-4-1996 they were rightly not promoted along with others from that date.

4. On the basis of the above pleadings of the parties the following issues were framed

ISSUES

1. Whether the reference is maintainable?
2. Whether the action of the Management of Kalinga Area of MCL in not promoting S/Shri K.K. Parida, D.C. Jena, U.C. Acharya, P.K. Rout, J.K. Samal, T.K. Chatopadhyay from Dumper Operator Gr. B to Gr. A

Excavator Dumper Operator with full back wages w.e.f. 1-4-1996 is legal and justified?

3. If not to what relief the workmen are entitled?

5. On failure of the Union to participate in trial it was set *ex-parte* on 17-7-2007. The Management as a consequence thereof examined one witness in *ex-parte* and produced necessary documents marked as Ext.-1 to Ext.-8/1. Hence the AWARD.

FINDINGS

ISSUE NO. 1

6. There being no challenge as to the maintainability of the reference, this issue is accordingly answered holding the reference maintainable.

ISSUE NO. 2 & 3

7. As regards the above issues it is deposed by the Management Witness that there being no post like Grade-A Excavator Dumper Operator as mentioned in the reference the disputants can never be promoted to that post. According to the Witness there is of course one Post called Excavator Operator Grade-I which covers posts like Shovel Operator, Diesel Dragline Operator, Drill Operators, Excavation Plant Senior Mechanic and Senior Dumper Operator and those are guided by a separate promotional avenues. As the Dumper Operator like the disputants are guided by other Rules they can not be fitted into automatically in any of the posts available under Excavator Operator, Grade-I.

8. Speaking about the normal method of promotion of a Dumper Operator of the category to which the disputants belong, it is stated that to be promoted to the rank of Dumper Operator, Grade-A one has to work continuously for eight years as Dumper Operator Grade-B and C and out of the said period he should have worked for more than 3 years as Grade-B operator as fixed in the settlement of 1984 of the J.B.C.C.I. (Ext.-2). Since none of the disputants have got such qualification by 1-4-1996 they are not even entitled to be promoted to the rank of Dumper Operator, Grade-A from that date as their normal chance falls due in April, 2000.

9. In view of the above unchallenged evidence of the Management, I find no justification in the demand of the Union and accordingly it is held that the disputants are not entitled for any relief as claimed in the reference.

10. Accordingly the reference is answered *ex parte* against the Union with no relief.

N.K.R. MOHAPATRA, Presiding Officer

List of witnesses examined on behalf of the 2nd party-workman.

The 2nd Party-union has not examined a Single Witness.

List of Documents exhibited on behalf of the 2nd party-workman.

No documents have also been filed by the 2nd Party-Union.

List of witnesses exhibited on behalf of the 1st party-Management.

M.W.-1-Shri Radha Mohan Panda.

List of documents exhibited on behalf of the 1st party-Management.

Ext.-1-Office order No. 8090 dated 1-11-1994.

Ext.-2-Extract of the relevant portion of the JBCCI settlements 1984.

Ext.-3-Internal Circular of 1995.

Ext.-4-Appointment letter No. 7790, dated 11-3-1991.

Ext.-5-Office Order No. 1760, dated 20-7-1991.

Ext.-6-Office Order No. 3635, dated 20/27-12-1993.

Ext.-7-Office Order No. 532, dated 23/24-1-1997.

Ext.-8-Office Order No. 5867, dated 15-9-1995.

Ext.-8/1-Office Order No. 5863, dated 15-9-1995.

नई दिल्ली, 11 सितम्बर, 2008

का.आ. 2812.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेंट्रल रेलवे के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, मुम्बई-2 के पंचाद (संदर्भ संख्या 19/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11-09-2008 को प्राप्त हुआ था।

[सं. एल-41012/32/2006-आई आर(बी-1)]

बी. के. मनचन्दा, अनुभाग अधिकारी

New Delhi, the 11th September, 2008

S.O. 2812.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 19/2007) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Mumbai, as shown in the Annexure in Industrial Dispute between the employers in relation to the management of Central Railway and their workmen, which was received by the Central Government on 11-09-2008

[No. L-41012/32/2006-IR (B-1)]

B. K. MANCHANDA, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

PRESENT

Shri A.A. Lad, Presiding Officer

Reference No. CGIT-2/19 of 2007

Employers in Relation to the Management of Central
Railway

The Sr. Personnel Officer (Construction)
Central Railway, CAO (C)'s Office

Personnel Branch, Mumbai Division
Mumbai CST, Mumbai-400001.

And

Their Workmen

Shri Rajesh Kadam
2/8, Central Railway Officer's Quarters
Matunga, Mumbai-400019.

APPEARANCES

For the Employer Mr. Jagannathan,
Representative.

For the Workmen No appearance
Mumbai, dated 25th July,
2008

AWARD

The Government of India Ministry of Labour by its Order No. L-41012/32/2006-IR(B-I), dated 16-03-2007 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following dispute to this Tribunal for adjudication:

"Whether the action of the Management of SPO (Construction) CAP's Office, Central Railway, Mumbai CST by terminating the services of Shri Rajesh Kadam, Bungalow Peon w.e.f. 17-2-2004 is justified? If not, what relief Shri Rajesh Kadam is entitled to?"

2. Vide Ex-2 & Ex-4, notices were sent to parties, but returned by postal authorities with remark "not claimed". So it is treated as workman not interested in the proceeding. Hence the order:

ORDER

Reference is disposed of for want of prosecution.

Date: 25-07-2008

A.A. LAD, Presiding Officer

नई दिल्ली, 11 सितम्बर, 2008

का.आ. 2813.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसार में, केन्द्रीय सरकार सेंट्रल रेलवे के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में विरहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, मुम्बई-2 के पंचाट (संदर्भ संख्या 81/2003) को प्रकटित करती है, जो केन्द्रीय सरकार को 11-09-2008 को प्राप्त हुआ था।

[सं. एल-41012/160/2003-आई आर (बी-1)]

बी. के. मन्चन्दा, अनुभाग अधिकारी

New Delhi, the 11th September, 2008

S.O. 2813.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 81/2003)

of Industrial Tribunal-cum-Labour Court No. 2, Mumbai as shown in the Annexure in Industrial Dispute between the management of Central Railway and their workmen, received by the Central Government on 11-09-2008.

[No. L-41012/160/2003-IR(B-I)]

B. K. MANCHANDA, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL No. 2, MUMBAI

PRESENT

Shri A.A. Lad, Presiding Officer

Reference No. CGIT-2/81 of 2003

Employers in Relation to the Management of Central
Railway

Divisional Railway Manager
Central Railway, Divisional Office
Mumbai CST, Mumbai-400001.

And

Their Workmen

The Vice President
Nhava Sheva Port & General Workers Union
Port Trust Kamgar Sadan, 2nd floor
Nawab Tank Road, Mazgaon,
Mumbai-400010.

APPEARANCES

For the Employer Mr. Abhay Kulkarni,
Advocate.

For the Workmen Mr. J.H. Sawant,
Representative.

Mumbai, dated 18th July,
2008

AWARD

The Government of India Ministry of Labour by its Order No. L-41012/160/2003-IR(B-I), dated 28-11-2003 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following dispute to this Tribunal for adjudication:

"Whether the action of the Divisional Railway Manager, Central Railway, Mumbai Division, Mumbai CST, Mumbai in not granting promotion to Shri P.N. Gaikwad, Office Supdt. Grade-II w.e.f. 1-3-1993 is justified? If not, what relief the workman, Shri P.N. Gaikwad is entitled to?"

2. Claim statement is filed by the Vice President of Union at Ex-3 making out case that, the employee involved in reference was employed by management of Central Railway, Mumbai Division on the post of Khalasi w.e.f. 19-01-1964. He was promoted to the post of Junior Clerk on

27-07-1970 then on the post of Senior Clerk on 04-07-1980 and then on the post of Head Clerk w.e.f. 01-01-1984. He was further promoted to the post of Office Superintendent (O.S.) Grade-II w.e.f. 13-9-1996. According to union, concerned workman officiated in the post of OS-II for the period from 06-03-1993 to 12-12-1994 and again from 23-11-1995 to 12-9-1996.

3. According to union, said workman is eligible and entitled for promotion to the post of Office Superintendent (O.S.) Grade-II w.e.f. 01-03-1993 as his case was fully covered under the scheme of restructuring of certain Group C & D Cadres as notified by the Ministry of Railway by letter No. PC-III/91/CRC/I dated 27-01-1993. According to union, workman working in the category of Head Clerk as on 01-03-1993 were entitled to be promoted to the post of OS Grade-II against the revised percentage. According to union, workmen working in the category of Head Clerk were to be selected for promotion to the posts of OS-II Grade only on scrutiny of Service record and confidential reports without holding any written and/or viva test. According to union, management decided to fill up 14 post of OS-II as per said scheme w.e.f. 01-03-1999 as well as against the resultant vacancies and existing vacancies. However out of these 14 posts, management decided not to fill up two posts against Restructuring of Cadre which were reserved for Scheduled Caste. According to union, said two posts were kept unfilled for SC candidates as per Chief Personal Officer's letter dated 12-11-1993.

4. Union states that on 01-03-1993, concerned workman was senior in services in the category of Head Clerk to L.R. Wagh. According to union, concerned workman P.N. Gaikwad was entitled for the post of OS-II Grade from 01-03-1993. However two posts of OS-II Grade reserved for SC were kept unfilled and workman was not given benefit against restructuring of cadre w.e.f. 01-03-1993.

5. According to union, management's letter dated 19-06-1997 based on Court Judgment, these two posts were to be released and filled by SC candidates. Since concerned workman is eligible to post of OS-II Grade, he was not considered. Management by letter dated 04-07-1997 instead of granting promotion to concerned workman granted promotion to Shri L.R. Wagh w.e.f. 01-03-1993 against reconstruction of cadre. According to union, said L.R. Wagh was junior to the concerned workman. Union further alleged that, concerned workman was wrongfully declared as unsuitable for the post in the year 1993. It is contended that, concerned workman was entitled to get promotion in place of L.R. Wagh and was entitled to post of OS-II Grade which was granted to L.R. Wagh on the principles of seniority. It is further stated by union that, he was also entitled for further promotion of Chief Office Superintendent w.e.f. 10-05-1998, the post which was made available to L.R. Wagh. However it was not given to him since he failed in Viva voce test. According to union, if concerned

workman could go through it, he might have passed said viva successfully and in the event that he would have promoted in the OS-II as per scheme of restructuring of cadre w.e.f. 01-03-1993. So it is prayed by the union that, the decision of first party management in not considering concerned workman for promotion on the post of OS-II grade w.e.f. 01-03-1993 and again not considering in the scheme of restructuring of cadre w.e.f. 01-03-1993 is not justified and requested management to grant promotion to the concerned workman on the post of OS-II Grade w.e.f. 01-03-1993 in place of L.R. Wagh and further declare promoted to the post of OS-I Grade w.e.f. 04-07-1997 which was granted to L.R. Wagh and then on the post of Chief Office Superintendent w.e.f. 10-05-1998 the post which was made available to Shri L.R. Wagh where Wagh failed to achieve it.

6. This is disputed by first party by filing reply Ex-11 making out case that, reference is not maintainable as concerned workman is not a 'workman' as defined under Industrial Disputes Act. It is stated that, union cannot raise dispute of this type about retired employee since concerned workman does not come under definition of "workman" as defined under Section 2 (s) of Industrial Disputes Act. It is further stated that reference is bad for non-joinder of necessary parties as post is prayed by Union to grant promotion given to L.R. Wagh. While giving relief to concerned workman, definitely L.R. Wagh will be affected. Since L.R. Wagh is not party to this reference, he cannot put up his case and relief cannot be granted against person who is not party in the reference which will affect on his right and claim. Besides it is stated that claim is made after 12 years which bad in law as no reason is given about delay. Even there is forum called Permanent negotiation Machinery (PNM). Since concerned workman did not approach PNM, cannot pray relief before this Tribunal. Since there is no community of interest among the workmen, and since union has no support of sufficient members to expose cause for individual it is stated that, no relief can be granted of this type. It is further stated that, in 1992 first party carried out exercise of selection process of Head Clerks to the post of OS-II Grade to fill up 12 vacancies. According to management, as per practice followed by in railways ratio of 1:3, first party invited 36 employees for the said selection process. The test of written test, interview after written test and after going through Confidential Report of candidate selection was made. Even panel was prepared for the said selection. 12 general candidates from the said panel were promote on 01-03-1993 among them Shri L.R. Wagh was successful in selection criteria and was promoted w.e.f. 06-01-1994 against vacancy occurred arising out of retirement of an employee. Since concerned workman has not proved his eligibility for promotion, he was not considered and now cannot pray to consider it after such a long period. So it is stated that, reference deserves to be rejected.

7. In view of above pleadings my learned predecessor framed issues at Ex-15 which are answered as follows :

Issues	Findings
(i) Whether P.N. Gaikwad is a "Workman"?	No
(ii) Whether he is entitled for promotion as claimed in the statement of claim?	No
(iii) Whether subject matter can cover under the definition of Industrial Disputes?	No
(iv) What relief second party is entitled to get?	No relief.
(v) What order?	As per order below.

Reasons

Issue No. 1:

8. Claim Statement is filed by Vice President, Nhava Sheva Port and General Workers Union raising dispute of not granting promotion to one of its member, Shri P.N. Gaikwad who was employed by the Management of Central Railway as a Khalassi w.e.f. 19-01-1964. The case of the union is that, said workman was promoted to the post of Jr. Clerk w.e.f. 27-07-1970 and then on post of Senior Clerk w.e.f. 04-07-1980 and thereafter said workman was promoted to the post of Head Clerk w.e.f. 01-01-1984 and then on post of Office Superintendent Grade-II w.e.f. 13-09-1996. According to union, said workman was eligible and entitled for promotion on post of OS-II grade w.e.f. 01-03-1993. As his case fully covered under the scheme of restructuring of certain Group C & D Cadres by Ministry of Railway by letter dated 27-01-1993 according to union, as per said scheme, workman of category of Head Clerk as on 01-03-1993 were entitled to post of OS-II Grade against revised percentage. According to union, as per said scheme, workmen working in category of Head Clerk were to be promoted to OS-II Grade only on scrutiny of service record and Confidential Report where written test or viva does not require. According to union, management decided to fill up 14 posts of OS-II grade as per the scheme w.e.f. 01-03-1999. However out of 14 posts management decided not to fill 2 posts against restructuring of cadres which were reserved for SC category. Said two posts were kept unfilled for SC candidates as per Chief Personnel Officer's letter dated 12-11-1993.

9. According to union, Shri Gaikwad concerned workman was senior in service and was in category of Head Clerk. He was senior to L.R. Wagh who was promoted by giving benefit of the scheme. According to union, concerned workman Gaikwad is entitled for the said post as well as entitled to get benefits of further promotions against the restructuring of cadre w.e.f. 01-03-1993.

10. This is disputed by management saying that,

concerned workman Gaikwad is not 'workman' when he made claim nor was employee of first party at the time of making reference since Gaikwad retired on 01-03-2001. He was not in employment of first party when dispute was raised. Besides dispute raised by union about Gaikwad cannot be treated as "industrial dispute" since Gaikwad was not in the employment of first party when dispute was raised. According to first party, union cannot raise dispute in respect of retired employee. Besides status of concerned workman who retired as a "Head Clerk", does not permit union to call concerned employee as 'workman' to seek benefits under Industrial Disputes Act.

11. To support that, second party has led evidence by filing affidavit Ex-13 in lieu of examination-in-chief where he stated the history of his service. Instead of stating anything about his status as workman and his entitlement over the claim, union was happy in narrating the history of service of concerned workman and capitalization promotion given to Shri L.R. Wagh by ignoring claim of concerned workman. In the affidavit nothing is stated by the concerned workman as to how he is 'workman' though he retired and how he can claim relief when he is not in the employment? In the cross this witness has stated that, the employee with whom he is comparing i.e. Wagh hail from Scheduled Caste category. Even he admits that, he has not approached the conciliation authority which is there to settle grievances of promotion. Against that, management has filed affidavit of one G.V. Jagtap in lieu of examination-in-chief at Ex-18 where he states that, concerned workman is not entitled to any relief since he is not 'workman'. He also stated that, since concerned workman is retired and since he has not explained the delay as his demand comes after 12 years from retirement, he is not entitled to any relief. In the cross this witness states that, said workman was maintaining register in respect of entry and exit of goods at Wadibunder. Even there is no cross of union or from the concerned workman's side putting suggestion about his status or making out case about his work, duties and status and his competency to demand the relief as prayed in the claim statement. Written Arguments is submitted by Second party at Ex-21 and by first party Ex-22.

12. First party is taking strong objection about status of concerned workman "Gaikwad" stating that, Gaikwad cannot claim any relief as he is not 'workman'. Besides it is stated that, he has not explained delay of 12 years as concerned workman retired in 2001 and claiming relief about his promotion w.e.f. 01-03-1993. For that, first party rely on citation published in 1999 LAB IC 2766 where Kerala High Court while deciding case of C.J. Everestee V/s. District Labour Officer and others where it is observed that the employees who have accept voluntary retirement on certain scheme cannot claim any relief under the Industrial Disputes Act. It is further observed that, by following judgement reported in Sukumaran V/s. HMT Ltd. 1999 (i) Ker L. T. SN 10, where Kerala High Court observed that,

workman who retired from services, cannot come under the definition of 'workman' and workman who is retrenched, dismissed or discharged can only raise dispute under provisions of Industrial Disputes Act. Besides he place reliance on the citation published in 2000 (1) CLR 671 where Apex Court while deciding case of Nedunadi Bank Ltd. V/s. K.P. Madhavankutty observed that, if dispute is raised after 7 years, it cannot be considered if such a delay is not explained.

13. As per Section 2 (s) of Industrial Disputes Act, definition of workman is given and as per that an employee who is dismissed, discharged or retrenched comes under the definition of 'Workman'. Said definition does not cover retired employee. Besides citation referred above clearly enlighten who can raise a dispute. If we apply that ratio and definition given under Section 2 (s) of Industrial Disputes Act and admitted position of concerned workman Gaikwad who retired cannot be called as 'workman'. We find he does not have qualification to call as a "workman". When he is not workman, in my considered view he is not entitled to any protection as given to a 'workman' who fall under definition of Section 2 (s) of Industrial Disputes Act and who can be protected under provision of Industrial Disputes Act. So I observe that, concerned workman Gaikwad is not a 'workman'. Besides his last status as OS-II which he occupied w.e.f. 13-09-1996, does not permit him to claim and seek any relief as 'workman'. Moreover, that status does not permit him to be called as a 'workman'.

Issue No. 3 :

14. While framing issues, order was passed to decide issue No. 1 first. As far as issue No. 1 is concerned, I discussed above and decided. Now issue when debar concerned workman in raising subject matter involved in the dispute create hurdle in discussing claim of concerned workman. When union raised dispute of promotion not given to concerned workman and when he was not in employment that time admittedly dispute was raised when concerned workman was retired on 01-03-2001 question arises how his demand can be considered? Besides he has not explained as to why he was late when his promotion was denied in 1993 by raising dispute after his retirement. Moreover he has not explained how he can get relief when he lastly worked on the post of OS-II Grade w.e.f. 13-09-1996? All these series of questions remain unanswered. Besides his status after retirement does not permit him to call as 'workman' as Section 2 (s) does not cover retired employees but permit employee to raise dispute about his retrenchment, dismissal or discharge from employment. The status of employee does not come in the purview of Section 2 (s) of Industrial Disputes Act. Besides he is raising dispute about promotion regarding past and further he is claiming promotion w.e.f. 01-03-1993 by raising dispute after retirement and also claiming promotion of future. He has not explained as to why he is late and delay in raising dispute? So definitely such dispute

cannot be called as "Industrial dispute". Moreover it appears, it is a individual dispute although claim statement is filed by Vice-President of union. It is not pointed out whether members of union agreed to raise dipute. It is not shown whether there was any resolution passed in the union permitting union to espouse the cause of the concerned workman who was not at all their member when dispute appears raised through union by the concerned workman. So definitely all these questions are not answered by union and concerned workman, which does not permit union and concerned workman to proceed with claim and the dispute. So I conclude that, subject matter involved in the reference does not come within the definition of Industrial dispute and answer this issue to that effect.

Issues Nos. 2 and 4:

15. Since second party failed to prove that, concerned workman comes within the definition of 'workman' and dispute raised by him through union is industrial dispute, he cannot seek any relief.

16. Beside he is challenging the promotion given to one L.R. Wagh. Admittedly said Wagh is not made party. According to concerned workman, promotion was given to Wagh w.e.f. 01-03-1993. According to concerned workman, actually that time he was entitled to promotion to the post of OS-I Grade as was granted to Wagh. According to concerned workman, he was also entitled for further promotions to the post of Chief Office Superintendent w.e.f. 10-05-1998 as the said post was made available to Wagh but Wagh could not get it, since he failed in viva test. If at all that opportunity would have given to him, definitely he might have achieved it. So all these claims of the concerned workman are hypothecated on surmises and presumptions. Only entitlement is not criteria to claim promotion. For promotion, one has to go through all those promotional test and must have that caliber and then one can claim promotion. Concerned workman appears that he forgot that and go on claiming promotion as of right. At the most he can fight for injustice but cannot fight for promotion as of right as promotion is given by looking number of things particularly performance, integrity, sincereness, punctuality and interest in work. Only by age or by seniority one cannot claim promotion. He is comparing himself with Wagh who is not made party in the proceeding. We do not know what is stand of Wagh. We do not know how Wagh was promoted? When he is specially challenging the promotion given to Wagh, question arises why he was shy in making Wagh a party. In the absence of Wagh, we cannot comment on his promotion and cannot say that, promotion given to Wagh was not correct and concerned workman was entitled in place of Wagh. Besides, he seeks his promotion hypothetically saying that, if promotion might have given to him, he might have succeeding in acquiring position of Chief Office Superintendent where Wagh failed as he could

not pass viva test. So the entire story of concerned workman and demand made by him through union is imaginary hypothetical and not made on facts which are on ground. Besides he waited for 12 years and now challenge promotion given to Wagh which he has not explained. Citation published in 1997 LAB IC page 3061 a decision of Gujarat High Court in case of Bansidhar Sarma and Others V/s. Certifying Officer and Labour Commissioner, Assam where it is observed that, one cannot challenge promotion given to a person who is not party in the proceeding. Same view is taken by Madhya Pradesh High Court while deciding case of Pushpa and Ors. V/s. State of M.P. published in 2006 LAB IC 761. The citation published in 1997 (2) LLN 140 where Bombay High Court while deciding case of Valente Lourdes V/s. Kadamba Transport Corporation Ltd. observed that, promotion is a method of selection and unless that selection is challenged without making allegation of extortion, or mala fide selection, said selection cannot be set aside. Here second party has not challenged selection or process of selecting Wagh, but he is claiming promotion as of right. When he has not made Wagh party, When he has not explained laches and delay and when his grievance does not come under Industrial Disputes Act and when he is not 'workman' as he is retired when dispute was raised, in my considered view, this type of person is not entitled to any benefit.

17. As stated above, I ordered to decide issue No. 1 as preliminary issue. However no evidence is led by both by making concentration on the order passed by this Court. Even they did not lead evidence only on single point but they led evidence on entire demand of concerned workman. Besides I find concerned workman when is not a 'workman', and dispute raised does not come in the definition of Industrial Dispute, I feel there is no point in keeping the reference alive for further orders. So I decided to discuss all that and deciding accordingly entire reference with conclusion that reference is not maintainable and deserves to be rejected. Hence the order:

ORDER

Reference is rejected.

Dated: 18-07-2008

A.A. LAD, Presiding Officer

नई दिल्ली, 11 सितम्बर, 2008

का.आ. 2814.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार रिजर्व बैंक ऑफ इण्डिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, मुख्य-2 के पंचाट (संदर्भ संख्या 79/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11-09-2008 को प्राप्त हुआ था।

[सं. एल-12012/27/2003-आई आर (बी-1)]

बी. के. मन्चन्दा, अनुभाग अधिकारी

New Delhi, the 11th September, 2008

S.O. 2814.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 79/2003) of Central Government Industrial Tribunal-cum-Labour Court No. 2, Mumbai, as shown in the Annexure in Industrial Dispute between the management of Reserve Bank of India, and their workmen, received by the Central Government on 11-09-2008.

[No. L-12012/27/2003-IR (B-1)]

B K. MANCHANDA, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

PRESENT

Shri A.A. Lad, Presiding Officer

Reference No. CGIT-2/79 of 2003

Employers in Relation to the Management of Reserve Bank of India

Through the Deputy General Manager,
Exchange Control Department,
Central Office, Central Office Building,
10th floor, Mumbai-400001.

...1st Party

And

Their Workmen

Reserve Bank Workers'
Organization, through General Secretary,
having his office at Parvatibi Building;
2nd floor, Pithe Street,
Mumbai-400001.

...2nd Party

APPEARANCES

For the Employer	:	Mr. S.C. Mahanta, Representative.
For the Workmen	:	Mr. Umesh Nabar, Advocate.

Date of reserving Award: 07-02-2008

Date of passing of Award: 24-07-2008

AWARD

The matrix of the facts as culled out from the proceedings are as under :—

2. The Government of India, Ministry of Labour by its Order No. L-2011/27/2003-IR(B-1), dated 27th November, 2001 and Corrigendum No. -2011/27/2003-IR (B-1) dated 20th February, 2004 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section

2(A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following dispute to this Tribunal for adjudication :

"Whether the action of the Management of Reserve Bank of India, Mumbai in not making change of Group of Hindi Translator from Group 'A' to Group 'D' is justified? If not, what relief the Union viz., Reserve Bank Workers' Organization is entitled to?"

3. To support the subject-matter in the reference the Statement of Claim is filed by the 2nd Party, Union through its General Secretary, at Exhibit 12 stating that, the employee involved in the reference was employed with 1st Party as Hindi Translator. However, he was doing work of Hindi Assistant which is treated as Group 'D' category. However, he was paid salary of Group 'A'. According to Union actually concerned Workman was entitled to get salary of cadre of Group 'D' as he was working as a Hindi Assistant though appointed as Hindi Translator. Union stated that, it is a registered Union and represents the employees concerned in the reference who are employed and working with the 1st Party, and who are posted as Hindi Translators in various establishments of the 1st Party Authority. Union has always fought for the betterment of services of employees employed with various establishments. Union has also always resolved the grievances of the employees through collective bargaining. However, 1st Party did not give any cooperation and negotiate the demand of the Union to treat the work of the concerned workmen of Group 'A' to Group 'D' and for grant of pay scale of Group 'D' which is not just and proper. According to Union concerned workman is appointed in Group 'A' but he was doing the work of Hindi Assistant. He performs duties identical and the same that of Hindi Assistant which comes under the category of Group 'D'. The principle of "equal pay for equal work" applies to the work of concerned workman. However, it is not followed by the Authority. It is prayed that, scale of Group 'D' given to the concerned workman and he be benefited of that cadre.

4. According to Union gradually 1st Party stopped filling in the posts of Hindi Assistants. Job of Hindi Assistant is got done through Hindi Translators. In fact it is change from Hindi Translators to Hindi Assistants. Said change is not effected by following provisions of Section 9(a) of the Industrial Disputes Act, 1947. No notice was given and the same has been effected without consultation of the Union and without hearing the Union on that point. 1st Party has gradually started abolition of the post of Hindi Assistant and started utilizing the services of Hindi Translators on the post of Hindi Assistants.

This is disputed by the 1st Party by filing reply, at Exhibit 15, contending that, S.V. Bhise, the concerned workman for whom Union has raised the issue, was initially appointed as a temporary Typist by the 1st Party on 14th October, 1980. He gave option for switchover to common

cadre of Clerical Grade II and was appointed as such on 6-12-1983. He applied for the post of Hindi Translator and on being found suitable as per the norms, he was appointed as Hindi Translator with effect from 19th August, 1996. Consequently he is presently working as Hindi Translator in FED. The letter of appointment indicates the duties of Hindi Translator which inter alia includes that, Shri Bhise can be assigned the regular clerical duties in any of the establishment of the Bank including that of Coin-Note Examiner Grade II and that, Shri Bhise would be eligible to draw special pay of Rs. 275 per month (now Rs. 405 per month) as long as he is working as Hindi Translator. According to 1st Party it was made clear that Shri Bhise would not be eligible to draw the special pay if (i) he ceases to work as Hindi Translator, (ii) if he is promoted as a Clerk or Coin-Notes Examiner Grade I; (iii) he would be eligible for the said special pay of Rs. 275 per month (now Rs. 405 per month) if he continues to work as Hindi Translator even after his promotion as a Clerk Grade I.

6. It is contended by the 1st Party that, as per circular dated 27th March, 1995 Mr. Bhise submitted his representation on 14th October, 2001 addressed to the Governor referring to the said circular requesting that, the salary paid to the Hindi Translator should be on par with that paid to Hindi Assistant alleging that, the duties of both the Hindi Translator and the Hindi Assistant listed out in the circular were common in nature and requested that, he should also be paid accordingly. His said request was rejected by letter dated 1st December, 2001. He did not challenge that, decision by approaching the appropriate forum. According to 1st Party concerned workman, is not entitled to get pay scale of Hindi Assistant as post of Hindi Assistant is promotional post. Since he was appointed as Hindi Translator and since he was not promoted to the post of Hindi Assistant he is not entitled to claim the scale of Hindi Assistant of Group 'D'. Whatever decision is given by the 1st Party is just and proper and Union cannot challenge it in the form of this prayer. It is further stated that, the 2nd Party Union cannot represent the concerned workmen as said Union is in minority in the establishment of the 1st Party. Since Hindi Translator is paid of salary of Group 'A' the prayer prayed by the Union to give pay scale in Group 'D' which is scale of promotional cadre is not justified. It is stated that, as of facts the concerned workman cannot get it. So it is submitted that, the reference may be rejected.

7. In view of the above pleadings issues were framed at Exhibit 18 which I answer as follows:

Issue.	Findings
1. Whether action of the Management in not making change of Group of Hindi Translator from Group 'A' to Group 'D' is justified?	No
2. What order?	As per order passed below.

Reasons

Issue no. 1:—

8. Union filed rejoinder at Exhibit 16 repeating the facts as mentioned in the Statement of Claim. However, Union failed to file affidavit of any of its witnesses and lead evidence in support of the claim of the Union to enable the concerned workman Shri Bhise to claim the pay scale of Group 'D' Hindi Assistant. Against that 1st Party also decided not to lead any evidence and filed pursis at Exhibit 19 stating that, it will rely on the documentary evidence placed on record and on case-laws.

(9) Perused the written arguments of the 2nd Party filed at Exhibit 20 and written arguments filed by the 1st Party at Exhibit 21. As per that, i.e. written arguments at Exhibit 20, Union tried to make out the case that, the concerned workman i.e. Mr. Bhise is doing the work of Hindi Assistant though he was posted as Hindi Translator. It is also stated that, gradually 1st Party started reducing the strength on the post of Hindi Assistant. According to Union work of Hindi Assistant is get done from Hindi Translator gradually is in fact 'a change'. Said 'change' is not intimated to the Union or made after discussion with the Union. According to Union 1st Party cannot make such a 'change' and it is illegal. When concerned workman is doing the work of Hindi Assistant and on the basis of "equal pay for equal work", he is entitled to get salary of the cadre of Hindi Assistant though he is posted as Hindi Translator. According to the Union when concerned workman is doing duties of Hindi Assistant he must get benefit of it. However, 1st Party is not considering it so it is prayed that scale of Group 'D' be given to the concerned workman. Whereas 1st Party in its written statement made out the case that concerned workman is posted on the post of Hindi Translator. According to 1st Party post of Hindi Assistant is a promotional post. According to 1st Party there are number of employees in various categories including officers in Class I, workmen i.e. like Clerks, Assistants, Stenographers, Typists etc. in Class III. According to 1st Party, there is subordinate staff as Peons, Mazdoors etc. in Class IV category for discharging its functions. The workmen involved in reference was posted actually as Hindi Translator. According to 1st party post of Hindi Assistant is a promotional post. Unless and until concerned workman is qualified for the post of Hindi Assistant, he cannot get cadre of Hindi Assistant vis-a-vis post of Hindi Assistant. He cannot get special pay of it which is attached to the post of Hindi Assistant. It is further stated that, as per settlement dated 18th August, 2000 post of Hindi Translator was kept in Group 'A' whereas post of Hindi Assistant was kept in Group 'D' which is having higher pay scale than the Group 'A' which is available for Hindi Translator. While posting person in post of Hindi Assistant, level of expertise, experience, suitability is looked into while appointing on the post of Hindi Assistant which bears different scale for different work

and different scale of the same post in various departments and various establishments. As of right Union cannot pray to direct 1st Party to give scale of 'Group 'D' to the concerned workman on the basis of "equal pay for equal work". There are number of judgments which does not permit to follow the principles of "equal pay for equal work". If work is done in particular department, by temporary employee said employee cannot claim of permanent employee and such a scale is not given to the person who is working on the same work. For that he relied on the citations published in the Service Law Journal VII 2005 page-264 where Apex Court while deciding case of Deb Narayan Shyam & Ors. Vs. State of West Bengal observe that, when matter is examined by Pay Commission and decided it, Court cannot interfere in it. According to 1st party the grievances of the concerned workman was decided by the 1st Party and it was intimated by reply dated 1-12-2001. 2nd Party did not challenge that decision where it was observed that, concerned workman is not entitled for pay scale of Group 'D' which is available to the Hindi Assistant. Citation published in AIR 2003 SC page 2658 while deciding the case of State of Haryana vs Tilak Raj observed that, if the claim is made by daily wage in comparison with the regular and permanent staff stating that she is doing same work which is done by permanent and regular work and if claim wages on the basis of "equal pay for equal work" it cannot be considered. Citation published in AIR 1989 page 19 where Apex Court while deciding case of State of U.P. vs. J.P. Chaurasia and Ors. Observed that, following principles of "equal pay for equal work" is the question of administration in such matters Courts need not and should not interfere. Citation published in 1988 SC page 1291 while deciding the case of Federation of All India Customs & Central Excise Stenographers (Registered) & Ors. Vs. Union of India and Ors. laid down the ratio that, when the differentiation sought to be justified on ground of dissimilarity of responsibility, confidentiality and relationship with the public etc. and on that basis scale is fixed though the work is of similar type for two persons who are claiming differences.

(10) As far as case of "change" under Section 9(a) of the Industrial Disputes Act, 1947 is concerned, no specific case is made out by the Union. No evidence lead on it. No argument advanced on it. Even issues framed does not cover the issue of "change". Besides 2nd Party did not press to have that issue of "change" for consideration and decision. So I feel I need not burden the judgment in commenting on subject of 'change'.

(11) It is admitted position that post of Hindi Assistant is promotional post. Even Union urging to give scale of Hindi Assistant to concerned workman saying that he is entitled for that scale. However, it is not proved that concerned workman is doing work of Hindi Assistant only. No evidence on that point is placed on record. In my considered view in the absence of evidence on the point of

work of concerned workman as a Hindi Assistant, I cannot give favour to concerned workman blindly in the absence of evidence. So if we, consider all this coupled with facts of this case that, the post of Hindi Assistant is a promotional post and concerned workman was appointed on the post of Hindi Translator, according to me he is not entitled to the scale of Group 'D' which is available for persons working on the post of Hindi Assistant. Besides it is not made out clear by the Union or by the concerned workman by leading any type of evidence and succeed in showing that duties discharged by the concerned workman are ditto and similar to the employees working on the post of Hindi Assistant. It is stated that, Shri Bhise, was doing similar type of work. Here Union claims that similar type of work is done by the concerned workman. It does not mean similar type means ditto or same work which is done by the employees working on the post of Hindi Assistant. Admittedly concerned workman is posted on the post of Hindi Translator. His post is of Hindi Translator, his scale is of Group 'A' which is applicable to Hindi Translator. Since he is not posted as Hindi Assistant in my considered view he is not entitled for the scale of Hindi Assistant i.e. of Group 'D'.

(12) In view of the discussions made above I conclude that, claim of the Union to give scale of Hindi Assistant to Bhise does not require to consider and deserves to be rejected. So I answer the above issue to that effect and passes the following order;

ORDER

Reference is rejected

with no order as to its costs.

Bombay, 24th July, 2008.

A.A. LAD, Presiding Officer

नई दिल्ली, 11 सितम्बर, 2008

का.आ. 2815.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इंदौर के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, मुम्बई-2 के पंचाट (संदर्भ संख्या 111/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11-09-2008 को प्राप्त हुआ था।

[सं. एल-12012/337/2000-आई आर (बी-1)]

बी. के. मन्चन्दा, अनुभाग अधिकारी

New Delhi, the 11th September, 2008

S.O. 2815.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 111/2000) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Mumbai, as shown in the Annexure in Industrial Dispute between the management of State Bank

of Indore, and their workmen, received by the Central Government on 11-09-2008

[No. L-12012/337/2000-IR (B-1)]

B. K. MANCHANDA, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL No. 2, MUMBAI

PRESENT

A.A. Lad, Presiding Officer

Reference No. CGIT-2/111 of 2000

Employers in Relation to the Management of State Bank of Indore

The Deputy General Manager,
State Bank of Indore,
EMCA House, Ballard Estate,
Mumbai 400 001.

..... 1st Party

AND

The Workmen

State Bank of Indore Employee's Union,
Through General Secretary, Empire House,
214, D. N. Road, Fort, Mumbai 400001.

..... 2nd Party

APPEARANCE :

For the Employer : Mr. S. P. Bhagwat, Advocate

For the Workmen : Mr. Umesh Nabar, Advocate

Date of reserving Award: 14th February, 2008.

Date of passing of Award: 29th July, 2008.

AWARD PART II

The matrix of the facts as culled out from the proceedings are as under:

1. The Government of India, Ministry of Labour by its Order No. L-12012/337/2000/IR(B-1) dated 8th November, 2000 in exercise of the powers conferred by clause (d) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following dispute to this Tribunal for adjudication:

"Whether the action of the Management of State Bank of Indore by dismissing Shri N.G. Jadhav from the services of State Bank of Indore. w.e.f. 13-4-99 is justified? If not, what relief the workman is entitled?

2. To substantiate the subject-matter referred in the reference 2nd Party submitted Statement of Claim at Exhibit 8, through General Secretary of the Union contending that, the concerned Workman joined with 1st Party on 23rd April, 1979 as a Clerk at Bhuleshwar Branch. Subsequently he was assigned work of Chief Cashier at Fort Branch and after 12th December, 1988, on the basis of seniority and merit, he was considered for the said post. According to the Union entire record of the concerned workman was unblemish and clean.

(3) On 3rd March, 1994 concerned Workman was served with suspension order alleging that, during his employment as Chief Cashier at Fort Branch, some serious irregularities have been observed. The allegations levelled against the concerned workman were that, when he worked as Chief Cashier Cheque No. 697626 was received by the Workman unauthorisedly. It is also alleged that, Rupees four lakhs loan was raised by the concerned Workman from Diwali fund account on 23rd October, 1993 and the same was repaid by him in cash in six installments between 24th October, 1993 and 4th November, 1993. Even C.D. Account of the concerned workman were allegedly showing abnormal transaction. It was also alleged that, on 29th December, 1993 Cash Officer had initially remarked shortage of cash of Rs. 4 Lacs, though it was then noticed as wrongly mentioned by mistake. It was also alleged that, concerned Workman took undue advantage and did not maintain the books properly till 30th December, 1993. So charge sheet was served on him dated 18th July, 1995 leveling above number of allegations and calling upon concerned Workman to submit his explanation questioning as to why, the disciplinary action should not be initiated against him? It was alleged that, concerned Workman misused position of the staff of the Bank and attempted to make unauthorized entries in the Bank's Books in respect of some transactions. Concerned Workman denied all those charges categorically, however, it was not heard by the 1st Party. It is stated that, without giving any consideration to the reply given by the concerned Workman, inquiry was initiated. Charges were not explained to the concerned workman. Account holder of C.D. Account No. N-87 was not examined by the Bank. Then charge sheet was issued on the presumption that, Workman intentionally wrote C D the Account No. N 87 without referring to correct title of the account mentioned in the Voucher. Material evidence of the witness were not placed on record by the 1st Party and as such, concerned workman lost an opportunity to cross examine said material witness. It is alleged that, fair and proper opportunity was not given to the concerned workman by the Enquiry Officer. The concerned Workman was deprived of the right to hear him. It is also alleged that, enquiry proceedings held against the concerned Workman was conducted by violating the principles of natural justice. Evidence led by the 1st Party did not prove the charges leveled against concerned Workman. The finding given by the Enquiry Officer holding concerned workman guilty of the Charge under 19.5 (k) is not just and proper. The Enquiry Officer only dealt with incomplete evidence which was favourable to the 1st Party. The Enquiry Officer totally ignored the evidence on record and gave finding just to oblige the Management. It is also alleged that, the finding of the Enquiry Officer is perverse and not according to the evidence led before him. Evidence was not valued by the Enquiry Officer noting the admissions given by witnesses and contradictions brought on record by the Defence Representative in the cross. The action taken by the

1st Party on the basis of such a finding is not proportionate. So it is submitted that, enquiry be declared not just and proper and finding perverse.

4. This prayer is disputed by the 1st Party, by filing reply at Exhibit 9, denying the allegations of the Secretary of the Union and case made out by the concerned Workman stating that, proper opportunity was given to the concerned Workman. He was represented by the Union representative. No evidence was led by the concerned Workman. There was sufficient evidence before the Enquiry Officer to hold concerned Workman guilty of the charges leveled against him. The misconduct of doing any act of prejudicial to the interest of the Bank or gross negligence or negligence involving or likely to involve the Bank in serious loss was leveled against the concerned Workman. The charge of willful damage or attempt to cause damage to the property of the Bank or any of its customers was also leveled against the concerned Workman. Even charge of giving or taking a bribe or illegal gratification from a customer or an employee of the Bank is also leveled against the concerned workman. After receiving Charge sheet 10 days' time was given to the concerned Workman to explain as to why enquiry should not be initiated against him. The reply, dated 4th October, 1995, given by the concerned Workman denying the allegations was read by the Management and since said explanation was not satisfactory by letter dated 17th October, 1995. First Party appointed Ram Atre as Enquiry Officer. By letter dated 16th November, 1995 date was fixed as 8th December, 1995 as the first date of the enquiry and Shri Wagle was appointed as Presiding Officer by the Bank. Concerned Workman appointed Shankar S. Joshi as his Defence representative, who defended the concerned Workman. Enquiry was held between 8th December, 1995 to 11th December, 1996 in which 6 witnesses were examined by the 1st Party. Except Mohile, all the remaining 5 witnesses were cross-examined by the 2nd Party's representative and declared that, he did not want to cross-examine Mohile, the witness of the 1st Party. Even concerned workman did not examine himself nor any other witnesses to defend his case. After giving opportunity to both to submit their written submissions, the enquiry officer gave finding holding concerned workman guilty of the charges leveled against him. Said finding was having ground, reason. The enquiry is fair and proper and finding was based on it. It is submitted that, such an enquiry cannot be declared null and void and not just and proper as claimed by the concerned Workman.

5. In view of the above pleadings my Ld. Predecessor framed the Issues at Exhibit 10. Out of those Issue No. 1 and 2 were tried as preliminary issues holding enquiry fair and proper and finding not perverse. After that reference was kept for deciding the point of punishment whether it is just and proper and whether the prayer of the concerned workmen to reinstate require to consider, which I answer as follows:

Issue	Finding
3. Whether the action of the Management of State Bank of Indore by dismissing Shri N.G. Jadhav from the services of State Bank of Indore w.e.f. 13-4-1999 is legal and proper?	Yes
4. What relief Shri Jadhav is entitled to?	No

REASONS:**ISSUE NO. 3:**

(6) After Part I Award reference was kept for adjudication on the point of punishment and prayer prayed 2nd Party (concerned workman) of by reinstatement. On that, 2nd Party—concerned workman—filed an affidavit at Exhibit 33 in lieu of the examination-in-chief stating that, the Disciplinary Authority did not consider his service record which was undoubtedly and undisputedly clean and unblemished. He further alleges that, the Disciplinary Authority did not consider the facts and circumstances leading to the transaction alleged against him and held him guilty of charge of dual misappropriation. He further states that, Disciplinary Authority ignored the fact that the said alleged facts at the most amount to negligence in duties. He further alleged that, Disciplinary Authority did not consider that. No loss of any kind has been caused to the Bank. He further alleged that, Disciplinary Authority did not consider the circumstances as well as his clean and unblemished service record of which he is entitled to get benefit. He further alleged that, he tried to get alternative employment but did not get it and that his entire family is dependent on him. He further alleges that, he sold out his property to cope-up with the needs of the family. He further alleges that, due to mental tension and torture which he faced during the above tenure require to compensate by reinstating him and by setting aside the punishment awarded of termination. In the cross 2nd Party made admits that, he joined 1st Party as a Clerk-cum-Cashier in 1979 at Bhuleswar Branch and worked at Fort Branch as Head Cashier when he was terminated. He further states that, he was served with the Show Cause notice dated 12-12-1997 and he replied it. He admits that, personal hearing was given to him before termination of his services and he replied to the show cause notice to the proposed punishment. He admits that, he did not try for employment after termination of his services. Even he did not enroll his name with the Employment Exchange. He then filed name with the Employment Exchange. He then filed closing purshis at Exhibit 35. Against that 1st Party has not led any evidence on the point of punishment and filed closing purshis at Exhibit 36.

(7) 2nd Party submitted written arguments at Exhibit 37 which were replied by the 1st Party by filing its submissions at Exhibit 38.

(8) 2nd Party in written arguments made out the case that, he joined 1st Party as a Clerk in 1979. He worked

sincerely and his entire service record is clean and unblemished and acquired promotion of Chief Cashier within 10 years. He further made out the case that, on 3-3-1994 he was suspended after 15 years of service though he was having clean and unblemished record. The enquiry was conducted against him. It was alleged that, the C.D. Account held by the 2nd Party was having heavy monetary unexplained transactions. On that, he submitted reply which was not considered by the Bank and enquiry proceedings were initiated against him.

(9) According to him 1st Party ought to have considered the explanation given by him. 1st Party did not consider the same and proceeded against him by issuing charge sheet and holding enquiry. According to 2nd Party, the punishment given of dismissal is not just and proper. It was given on ill motive or with mala fide intention or given mala fide with intention to victimize the 2nd Party workman. Undisputedly the Disciplinary Authority did not look into the clean and unblemished service record of the 2nd Party, concerned workman and confirmed the punishment of termination which is not just and proper. It is further contended that, no witnesses of the concerned work were examined. According to 2nd Party charges leveled against him are not proper and the allegations leveled against him does not constitute the misconduct which warrant dismissal from service. In support of that, 2nd Party relied on the citations published in AIR 2006 page 1438 Punjab State Civil Supplies Corporation Limited vs Sikander Singh, 1979 (II) LJI page 14 SC Union of India and Ors. vs J. Ahmed. Against that 1st Party by written arguments at Exhibit 38 made out the case that, 1st Party conducted an enquiry and examined 6 witnesses before the Enquiry officer who were cross-examined by the 2nd Party. However, no witness was examined by the 2nd Party before the Enquiry Officer. Even no any other witness was offered or brought before the Enquiry Officer by the 2nd Party to support his contentions. After recording the evidence Enquiry Officer submitted report dated 26th May, 1997 with observations that charges are proved except charge/allegations Nos. 5 and 16 as partially proved against concerned workman. Said report was sent by the Bank to the concerned Workman vide its letter dated 12th August, 1997. He replied it by his letter dated 19th August, 1997. Then show cause notice was issued to the 2nd Party on 12-12-1997 for the proposed punishment which was replied by the concerned workman by his letter dated 31-1-1998. Then after going through the report and findings of the Enquiry Officer and reply to the show cause notice and the submissions of the concerned workman, inflicted the punishment of dismissal and served on the concerned workman letter dated 13-4-1999. By said letter he was removed from dated 13-4-1999. By said letter he was removed from services. Then he preferred an appeal by letter dated 25th June, 1999. The Deputy General Manager, the Appellate Authority gave personal hearing to the concerned workman and by letter dated 26th October, 1999 Disciplinary Authority informed him

that, his appeal cannot be survived and order of dismissal was upheld. Thus misconduct alleged against the concerned workman which was proved beyond reasonable doubt was considered by the Disciplinary Authority. The position of the concerned workman as, "Head Cashier" was considered while awarding the said punishment. The post of the "Head Cashier" was a "confidential" and "most worthy" post which was also considered by the Authority. Disciplinary Authority Disciplinary considered the allegations alleged against the concerned workman and evidence brought on record and the charges proved against the concerned workman and they decided to terminate his services which does not require to be interfered. 1st Party further contended that, it has lost the confidence in the 2nd Party and he cannot be continued on such a confidential post. 2nd Party admit that, he did not try for employment, does not show any proof that he tried but did not get any employment. No evidence is led to show that, how many family members are depending on him. Hence, the 1st Party requested that, the punishment awarded to the concerned workman does not require to be interfered. In support of that number of citations were referred by the 1st Party.

10. Here we have to see that, serious charges were leveled against the concerned workman, including the charge of abnormal heavy transaction in the C.D. Account of the concerned workman, misusing cheques of other account, charge of doing act of prejudicial to the interest of the Bank or gross negligence or negligence, to involve the Bank in serious loss and charge of willful damage or attempt to cause damage to the property of the Bank or any of its customers is leveled against the concerned workman. The said charge was observed proved by the Enquiry officer. Then charge of using cheque No.20510, 20509, 20512 and 20519 for various amounts and even account number was filled in various amounts and even account number was filled in by the concerned workman in his own hand writing which were of C.D. Account No. N 84. So the Enquiry Officer observed that, C.D. Account No. 84 was given to Shri Nandkumar Jadhav whereas cheque Book issued to said C.D. Account No. 84 was filled in by the concerned workman Shri N.G. Jadhav in his own hand writing which is admitted by him though he was not concerned with that C.D. Account No. N 84. Said charge was also proved against him. Then charge of sending cheque No.697626 for Rs 4,00,000 of Account No.3968 of Shri Kantilal Jain which was credited in C.D. Account No.N 87 of the concerned workman. Said entry was made through Bank's Internal Transfer Voucher by the concerned workman. Said cheque was returned unpaid in clearing on 24th December, 1993 with remarks "Refer to Drawer". That, the said cheque was received by him unauthorisedly making slight deliberate alterations in the name Le. N.D. Jadhav and the said cheque was returned and received by concerned workman by making initials on the cheque and retuned back. In fact said cheque ought to

have been returned to back. In fact said cheque ought to have been returned to the concerned customer. However, he accepted it in making slight corrections and sent it back. Said charge was also proved against the concerned workman. Then allegation of his receiving, with interest, a loan of Rs 4,00,000 from Daweli account which was credited in his S.B. Account No. 20 and said loan was repaid by him in six cash instalments of huge amount between 26-10-1993 to 4-11-1993. As per Enquiry Officer evidence brought before him revealed that Rs. 75,000/- was paid in his account on 26-10-1993, Rs 25,000 on 27-10-1993, Rs.1,0000 on 28-10-1993, Rs. 65,000/- on 29-10-1993, Rs.50,000 on 30-10-1993, Rs 89,000 on 4-11-1993 which was suspicious and source of said repayments was not explained by the concerned workman and said charge was also proved against the concerned workman. Then allegation of showing total payment not correct on 24-12-1993, Cheque bearing No. 20516 for Rs. 4 lakh issued by c.s.e. on his Current Account but he purposely write Account No. 87 instead of No.84 on the said cheque and presented it for cash payment. So this charge was also proved against the concerned workman. Then charge of Token Book was leveled against the concerned workman. Then charge of abnormal heavy amount (cash/transfer) credit/debit transactions between 27-11-1993 to 29-1-1994 in his account is also proved against him. Then charge of credit entry of Rs.30,000/- each made in CD Account No. N 87 on 1-1-1994, Debit entry of Rs.10,000/- on 3-1-1994 in CD Account No.N 87, credit entry of Rs.10,000/- on 12-1-1994 issued on CD Account No. N 87 of the concerned workman were leveled against the concerned workman and which were also observed proved by the Enquiry Officer. Then charge of taking undue advantage of his being an employee of the Bank being a 'Head Cashier' the practice of recording denomination-wise details of cash deposited at the close of business in the cash reserve book was not adhered to by him prior to 30-12-1993 and suddenly this practice was started from December, 30, 1993 onwards was also leveled against the concerned workman. The said charge was also observed proved by the Enquiry Officer against the concerned workman. Ten charge of cash memo dated 29-12-1993 showing that there was 200 currency of Rs.500 denomination in the joint custody and 2 currency notes of the same denomination in the hand balance of the concerned workman had swelled to look at close of December 30, 1993 i.e. net increase of 800 currency notes worth Rs.4 lakhs though there was no receipt of Rs.500 denomination notes on that day. The said charge was also observed proved against the concerned workman

(11) If we consider the charges leveled against the concerned workman and the findings given by the Enquiry Officer which remain undisputed one has to consider the status and the post held by the concerned workman which was of 'Chief Cashier'. in the Bank reveals that, concerned workman is not entitled for any reliefs.

(12) Much capital is made by the concerned workman that, Authority did not consider his past unclean and unblemished record. According to 1st Party if the charge of misconduct is proved in that case, past record of the concerned workman does not come to his rescue and need not be considered while confirming the punishment on such an employee. For that, 1st Party relied on citation published in 2006 LLR page 252 where Apex Court while deciding the case of Karnataka Bank Limited vs A.L. Mohan Rao observed that, as long as an enquiry is fair, proper and also where misconduct is proved in that case, the past record of the concerned workman does not play any role. The Apex Court while deciding the case of Union Bank of India vs Vishwa Mohan published in 1998 (3) LLN (SC) page 89 observed that, in Banking business absolute devotion, diligence, and integrity need to be preserved by every Bank employee and in particular by Bank Officer. It is further observed that, if it is not observed confidence of depositors would be impaired. Apex Court while deciding case of P.C. Kakkar vs Chairman and Managing Director, United Commercial Bank Ltd. Published in 2003 LLR page 436 observed that, where punishment is imposed upon employee by the employer interference by the Court does not require. Citation published in 1995 1 LLJ page 233 where Karnataka High Court while deciding the case of Bank of India vs D. Padmanabhadu & ors. observed that, the Bank is the custodian of the money of the customers and the Cashier is the person who deals with the money and he must be more diligence and honest and when misappropriation is proved against him he cannot be considered sympathetically on the ground of his caste or for any other reasons. While deciding the case of Brihamumbai Municipal Corporation vs. Dattatraya Sonawane, published in 2006 II CLR p. 848, Bombay High court observed that, if the charge of misconduct of misappropriation is duly established in the enquiry it would not be possible to hold that the punishment of dismissal was disproportionate and set aside by the Labour Court for reinstatement with the directions of back wages when charge of misappropriation is proved against the concerned workman. Allahabad High Court while deciding the case of Pinki Bose vs. Presiding officer, Central Government Industrial Tribunal-cum-Labour Court, Kanpur published in 2006 II CLR page 242 observed that, if charge is proved in that case no interference is required by any Court. Citation published in 2006 CLR (SC) page 32 while deciding the case of Life Insurance Corporation of India vs R. Dhandapani observed that, Labour Court or Industrial Court is expected to interfere with the decision of the Management under Section 11-A of the Act only when it is satisfied punishment imposed by the Management is wholly and shockingly disproportionate to the degree of the guilt of the concerned workman. Citation published in 2006 I CLR-(SC) page 854 Apex Court while deciding the case of L.K. Verma vs HMT Ltd. and anr. observed that, after holding enquiry and after charges proved of

misconduct is proved against employee and he is dismissed in that case, no interference is required.

(13) Against that citation referred by the 22nd party by producing Xerox copies of the decision in Civil Applications Nos. 6269, 6271 and 6273 of 2003 published in AIR 2006 SC page 1438 Punjab State Civil Supplies Corporation Ltd. vs Sikander Singh tried to point out that, 2nd Party can claim back wages, on order of dismissal, if it is set aside. However, it is not pointed out how this citation help the concerned workman and how he can get benefit when order of dismissal cannot be set aside. Another citation referred published in 1979 II LLJ. Page 14 (Union of India another vs J. Ahmed) on the point of misconduct and definition of misconduct. However, it is not pointed out how the definition of misconduct given in the said citation is applicable in the instant case and how the concerned workman can get benefit of it?

(14) If we consider all this coupled with the evidence I am of the view that, the punishment awarded on 2nd Party is Just, proper and does not require any interference. So I answer this point in favour of the Management.

(15) 2nd Party pray for reinstatement with back wages. But in the instant case 2nd Party is unable to establish that, the order of dismissal can be set aside. On the other hand the contention of the 1st Party is that, the misconduct which is leveled against him and were proved were of very serious nature. There were number of irregularities. Besides there were number of ingredients in the actions of the concerned workman which were of high account of credit and debit. However, these were not explained. Besides the tampering with the cheque book, Token Book is also leveled against the concerned workman which is of serious nature. When the work of the concerned workman is that of a 'Cashier' which is responsible post. In this situation if charges are proved against the concerned workman who is working on such a post it will give a bad signal to others if leniency is shown to the 2nd Party. When 2nd Party fails to prove that, punishment awarded of dismissal is not just and proper question of reinstatement does not arise. So I answer this issue to that effect.

(16) In view of the above discussion I conclude that reference deserves to be rejected. Hence, the order:

ORDER

Reference is rejected with no Order as to its costs.

Bombay, 29th July, 2008.

A.A. LAD, Presiding Officer

नई दिल्ली, 11 सितम्बर, 2008

का.आ. 2816.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार साऊथरन रेलवे के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण,

इरनाकुलम के पंचाट (संदर्भ संख्या 50/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11-09-2008 को प्राप्त हुआ था।

[सं. प्र. ०११/४७/१९९५-आई आर (बी-१)]

श्री. के. मनचन्दा, अनुभाग अधिकारी

New Delhi: 11th September, 2008

S.O. 2816.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 58/2006) of Industrial Tribunal-cum-Labour Court, Ernakulam, as shown in the Annexure in Industrial Dispute between the management of Southern Railway, and their workmen, received by the Central Government on 11-09-2008.

[No. L-41011/47/1995-18 (B-1)]

B. K. MANCHANDA, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM

Present : Shri P. L. Norbert, B. A., LL. B.,
Presiding Officer

(Thursday the 19th day of June, 2008)

I. D. No. 58/2006

(I.D. No. 04/2001 of Labour Court, Ernakulam)

Union : The General Secretary,
Southern Railway Construction-
Workers Union,
Railway Quarters No. 116-B,
Ernakulam.

By Adv. Sri C. Anil Kumar

Management : 1. The Executive Engineer Construction,
Southern Railway, Ernakulam.

2. The Divisional Electrical Engineer
(Construction), Southern Railway,
Ernakulam.

3. The General Manager, Southern
Railway, Chennai.

By Adv. Sri M. C. Cheriyan.

This case coming up for hearing on 23-05-2008, this Tribunal-cum-Labour Court on 19-06-2008 passed the following:

AWARD

This is a reference made under Section 10(1)(d) of Industrial Disputes Act. The reference is:—

“Whether the action of the management of Southern Railway, Ernakulam denial of interim relief granted by 3rd Pay Commission to Shri K. N. Balakrishnan and 57 others (Annexure) is justified? If not what relief the workmen concerned are entitled?”

2. The facts in brief are as follows:— 58 employees

of Railway are claiming interim relief ordered by Government as per the recommendation of 3rd pay commission and adopted by the Railway Board. The interim relief, if allowed, is payable from 01-03-1970 onwards.

3. According to the management the claim is belated and stale. Some of the workers have died, a few others have retired and the claim itself is highly belated and should have been raised in 1970. None of the workers were regular employees of the railway. They were daily rated project casual labourers and were paid daily wages and not scale wages. None of them are entitled to interim relief recommended by the 3rd pay commission in the interim report. It is available only to regular employees of railway and not to casual employees.

4. In the light of the above contentions the following points arise for consideration:—

1. Is the claim stale?

2. Are the 58 workers entitled for interim relief?

The evidence consists of the oral testimony of WW 1 and documentary evidence of Exts. W-1, to W-48 on the side of the union and Ext. M-1 on the side of the management.

5. **Point No. 1:**— The names of workers are mentioned in the annexure to the reference. Some of them were working since 1954. It is an admitted fact that the 3rd pay commission had recommended to the Government for payment of interim relief to Central Government Employees from 01-03-1970 onwards. The Railway Board by its Board's decision adopted the order of the Government and decided to pay interim relief to the employees of Railway as well from 01-03-1970. The management contends that the dispute is raised after a period of 30 years in 2001. Hence the claim is highly belated and cannot be entertained. It is to be noted that the cause of 58 workers was espoused from 1970 onwards by representing before the railway authorities and Government and filing writ O.P.s. and appeals. Exts. W-4, 5, 7, 8, 25, 28, 29 reveal this. Exts W-37 and 38 are judgments dt. 27-11-74 and 22-01-1974 respectively of Hon'ble High Court of Kerala in writ petitions filed claiming interim relief recommended by 3rd pay commission and ordered by Railway Board. Thus the claim for interim relief has been very much alive. Whether the 58 workers had attained temporary status and were entitled to scale wages were also agitated in writ A.P. and in appeals which according to the union had a bearing on the claim for interim relief. Thus the issue was prolonged not due to any fault or laches on the side of the union or workers but the authorities concerned had not rendered a final decision. Ext. W-40 is a judgment in A.P. 2075-76 dated 28-11-1978 of the Hon'ble High Court of Kerala directing the Government to refer the dispute regarding interim relief to industrial tribunal. Again union made representation to Government to refer the dispute. Ext. W1 O.P. was filed in 1996 for a direction to Government to refer the dispute. It was allowed. Against

that Ext. W2 writ appeal was filed by Government, but was dismissed on 25-01-2001. Thereafter by Ext. W-3 reference order dated 20-03-2001 was issued. The delay occurred in the above circumstances and there is no laxity or inaction on the part of union. Hence it is difficult to accept the contention of the Railway that the claim is stale and hence unsustainable.

6. Point No. 2:— The union on behalf of 58 workers are claiming interim relief from 01-03-1970 onwards. The 3rd pay commission in their interim report dated 16-09-1970 had recommended grant of interim relief w.e.f 01-03-1970 to Central Government Servants having a basic pay not exceeding Rs.1250 per month. The Railway Board by its decision dated 01-10-1970 resolved to extent the said relief to railway employees. However the Board had also decided that the order for interim relief will not be applicable to (1) Casual Labour (2) Contract Labour (3) Railway Servants posted in Indian Mission abroad. Ext. W-31 page 2 contains the decision of the railway board to pay interim relief to its servants. There was some doubt regarding the application of the order for payment of interim relief to casual labourers. Hence clarification was sought and page 1 of Ext. W-31 contains the clarification:—

“2. The President is pleased to clarify the above point as under:—

- (i) Interim relief should be granted according to the basic pay ranges indicated in Board's letter referred to above also to Railway staff who are in the prescribed scale of pay.
- (ii) Interim Relief should also be granted to casual labour and substitutes employed on Railways who have attained the status of temporary Railway servants on the completion of six months' continuous service, and in the case of substitute Teachers on their attaining temporary status after three months continuous service.
- (3) The above clarifications are effective from 1-3-1970”.

By Ext. W-25 and 28 the Assistant Labour Commissioner and Executive Engineer of the railway informed the union that casual workers working in projects are not entitled for interim relief ordered by Railway Board. Meanwhile the union made a representation to the Hon'ble Minister of Railways demanding interim relief to casual labourers as well. The Labour Minister by Ext. W7 replied to the union that the casual employees who have not attained temporary status are not entitled for interim relief. According to the railway the 58 workers were project workers and hence, however long they worked, they were not eligible for temporary status or interim relief. The union disputes that the workers were employed in projects. Therefore the first question that requires to be considered is whether the workers were employed in projects or in open line. It is not disputed that casual workers in open line on completion of 6 months' continuous service are entitled for temporary status. Rule 2501 of Railway

Establishment Manual 1960 (Edition 1968) defines casual labour as follows:—

- “(a) Casual Labour refers to labour whose employment is seasonal, intermittent, sporadic or extends over short periods. Labour of this kind is normally recruited from the nearest available source. It is not liable to transfer, and the conditions applicable to permanent and temporary staff do not apply to such labour.
- (b) The casual labour on railways should be employed only in the following types of cases, namely:—
 - (i) Staff paid from contingencies except those retained for more than six months continuously:— Such of those persons who continue to do the same work for which they were engaged or other work of the same type for more than six months without a break will be treated as temporary after the expiry of the six months of continuous employment.
 - (ii) Labour on projects, irrespective of duration, except those transferred from other temporary or permanent employment.
 - (iii) Seasonal labour who are sanctioned for specific works of less than six months duration. If such labour is shifted from one work to another of the same type, e.g., relaying and the total continuous period of such work at any time is more than six months' duration, they should be treated as temporary after the expiry of six months of continuous employment. For the purpose of determining the eligibility of labour to be treated as temporary, the criterion should be the period of continuous work put in by each individual labour on the same type of work and not the period put in collectively by any particular gang of labourers”.

7. This Rule was amended in 1990 and is contained in Rule 2001 of Railway Establishment Manual Vol. II Edition 1990. However so far as the dispute is concerned it was the old Rule that was applicable to the workers in question. As per Rule 2501 (b) (ii) irrespective of the duration of the employment labourers on projects were treated only as casual labourers. It is as per the decision of Hon'ble Supreme Court in Inder Pal Yadav's case that it was held that project casual labourers who would complete 360 days of continuous service, will be entitled to temporary status from 01-01-1981 [Inder Pal Yadav v. Union of India (1985) 2 scc 648]. As per the direction of the Hon'ble Supreme Court the Railway Ministry framed a scheme regarding the service conditions of project casual labourers. The railway decided

to grant temporary status to project casual labourers who completed continuous service of 360 days. The scheme was made applicable to (1) Casual labour on projects who were in service as on 01-01-1984. (2) Casual labour on projects who though not in service as on 01-01-1984, but had been in service and had completed service of 360 days. But the Hon'ble Supreme Court modified the scheme with a cut of date as 01-01-1981 instead of 01-01-1984. Other terms of the scheme were accepted by the Supreme Court. The relevant para 5 of Inder Pal Yadav case reads :

"The scheme envisages that it would be applicable to casual labour on projects who were in service as on January 1, 1984. The choice of this date does not commend to us, for it is likely to introduce an invidious distinction between similarly situated persons and expose some workmen to arbitrary discrimination flowing from fortuitous court's order. To illustrate, in some matters, the court granted interim stay before the workmen could be retrenched while some others were not so fortunate. Those in respect of whom the court granted interim relief by stay/suspension of the order of retrenchment, they would be treated in service on January 1, 1984 while others who fail to obtain interim relief though similarly situated would be pushed down in the implementation of the scheme. There is another area where discrimination is likely to rear its ugly head. These workmen come from the lowest grade of railway service. They can ill afford to rush to court. Their Federations have hardly been of any assistance. They had individually to collect money and rush to court which in case of some may be beyond their reach. Therefore, some of the retrenched workmen failed to knock at the doors of the court of justice because these doors do not open unless huge expenses are incurred. Choice in such a situation, even without crystal gazing is between incurring expenses for a litigation with uncertain outcome and hunger from day-to-day. It is a Hobson's choice. Therefore, those who could not come to the court need not be at a comparative disadvantage to those who rushed in here. If they are otherwise similarly situated, they are entitled to similar treatment, if not by anyone else at the hands of this Court. Burdened by all these relevant considerations and keeping in view all the aspects of the matter, we would modify part 5.1(a)(i) by modifying the date from January 1, 1984 to January 1, 1981. With this modification and consequent rescheduling in absorption from that date onward, the scheme framed by Railway Ministry is accepted and a direction is given that it must be implemented by recasting the stages consistent with the change in the date as herein directed".

8. Going by the above decision in Inder Pal Yadav's case and the scheme framed by the Ministry of Railway none of the project casual labourers were entitled for temporary status till 01-01-1981. However the union claims

that the workers in question were eligible for temporary status even prior to 1970. They contend that the workers were employed in open line and not in projects. The question is, is that true? There are 2 wings in the railway (1) Open Line (where yard maintenance work is carried out). (2) Construction Wing (which includes project work). This can be seen from the definition of 'casual labour' in R-2001 of Railway Establishment Manual-Vol-II, 1990 Ed.

It is clarified in *L. Robert D'Souza V. Executive Engineer, Southern Railway AIR 1982 SC 854* para 11 at page 861 as follows:—

"The test provided is that for the purpose of determining the eligibility of casual labour to be treated as temporary, the criterion should be the period of continuous work put in by each individual labour on the same type of work and not the period put in collectively by any particular gang or group of labourers. It is thus abundantly clear that if a person belonging to the category of casual labour employed in construction work other than work-charged projects renders six months continuous service without a break, by the operation of statutory rule the person would be treated as temporary railway servant after the expiry of six months of continuous employment. It is equally true of even seasonal labour. Once the person acquired the status of temporary railway servant by operation of law, the condition of his service would be governed as set out in Chapter XXIII".

9. Exts. 18 to 24 are wage revision orders of the period 1961 to 1969. The daily wage rates were revised and enhanced from time-to-time. The names of casual labourers are mentioned in Exts. W-18 to W-24. If the 58 workers were working in open line they would have got temporary status and consequently scale wages on completion of 6 months' continuous service. Some of them had worked from 1954 onwards as casual labourers and many others before 1969. But the very fact that they were paid at daily wage rate and their wages were revised from time to time as seen from Exts. W-18 to W-24 itself is indicative of the fact that they were working in projects and not in open line. While revising the wages, on the basis of consolidated pay, daily wage was fixed. In fact in the claim statement the union has not put forward a specific case of employment in open line. However on the basis of Ex. W-11 office order of southern railway dated 16-07-1956 it is submitted by the learned counsel for the union that one of the 58 employees namely Sri. V.N. Kumara Pillai, No. 2 on the list of employees attached to the reference was appointed as temporary Jascar/ watchman on a consolidated pay of Rs. 60 per month w.e.f. 20-07-1956 and hence he was working in open line. This is an office order of 1956. The wage is fixed at consolidated market rate. It is mentioned in the note to the office order that the terms of employment is purely temporary as applicable to other casual labourers except that they will be eligible for T.A. under normal rule that are applicable to other temporary class-IV staff on the construction. Ext.

W-12 office order dated 30-09-1959 allotting the work shows that Sri. V. N. Kumara Pillai was posted in the construction wing. Exts. W-22 to W-24 shows daily wages of Kumara Pillai and others were revised in later periods of 1967, 1968 and 1969. Therefore the contention that Sri. V. N. Kumara Pillai was working in open line and had acquired temporary status as early as in 1956, cannot stand.

10. However it was argued by the learned counsel for the union that General Secretary of the Union Sri. Robert D'Souza was a similar casual worker who was denied temporary status by the Railway. But Hon'ble Supreme Court held in AIR 1982 SC 834 (referred supra) that he was entitled to temporary status and consequential benefits. But the decision cannot be extended to workers in this case. So far as Robert D'Souza is concerned it was found by Hon'ble Supreme Court that he was working continuously for more than two decades and he was transferred on and of from one place to another and for host of other reasons, he cannot be treated as a project worker and, therefore, entitled to temporary status. But union would rely on Ext. W6 and submit that most of the workers in question were sought to be transferred to another place which is contrary to the Railway Establishment Manual R-2501 (a) regarding casual labour. The difference between work in open line and project is contained in R-2001 (i)(a) & (b) of Railway Establishment Manual Vol. II, Ed. 1990. Going by that Rule the work mentioned in Ext. W6 is not open line, but project. "Ext. W6 reads - "Since a major portion of the work in this construction unit is over....." Though by Ext. W6 Ex. Engineer, Ernakulam had enquired with other Ex. Engineers in other places whether the casual workers could be accommodated in their units, it does not mean that they were actually transferred. The union does not have a case that they were transferred at any time. Hence on the basis of Ext. W6 it cannot be said that the workers were employed in open line. WW1 Sri. L. Robert D'Souza himself has stated that there are no records to show that other than himself any of the 58 workers were transferred from Ernakulam division to any other division.

11. In the light of the above circumstances and evidence it has to be held that none of the 58 workers were working in open line, but only in projects and hence they were mere casual labourers, not entitled for temporary status before 01-01-1981 (i.e. until Railway framed a scheme in respect of project workers). If that was their status in the employment, they are not eligible to claim interim relief ordered as per 3rd pay commission report.

12. I have referred to Railway Board's decision, Ext. W-29 (page-4) to pay interim relief to railway employees and Ext. W-31, clarification regarding payment of interim relief. The clarification is to the effect that interim relief is to be paid to regular railway employees drawing a basic pay up to a particular range and to casual labour who have attained temporary status. The present workers do not fall under any of the two categories in Ext. W-31 and hence cannot succeed to get interim relief ordered by Railway Board and payable from 01-03-1970.

In the result an award is passed finding that the action of the management Southern Railway in denying interim relief to Shri. K. N. Balakrishnan and 57 others is legal and justified and they are not entitled for any relief.

The award will come into force one month after its publication in the Official Gazette.

Dictated to the Personal Assistant, transcribed and typed by her, corrected and passed by me on this the 19th day of June, 2008.

P. L. NORBERT, Presiding Officer

APPENDIX

Witness for the Union

WW1 - 12-04-2007 Sri. L. Robert D'Souza.

Witness for the Management—Nil

Exhibits for the Union

- W1 - 21-10-1999 Photostat copy of Judgment in OP 5003/1996 of Hon'ble High Court of Kerala.
- W2 - 25-01-2001 Photostat copy of Judgment in WA 958/2000 of the Hon'ble High Court of Kerala.
- W3 - 20-03-2001 Photostat copy of reference order No. 41011/47/95 IR (B-II) of M/o. Labour, Government of India.
- W4 - 30-07-1995 Copy of representation sent by Union before the Secretary to Government of India, M/o. Labour.
- W5 - 20-05-1994 Photostat copy of statement submitted by Union before the ALC @, Ernakulam.
- W6 - 05-09-1996 Photostat copy of letter No. P-107/CN/ERS of the Executive Engineer Office, Ernakulam, Southern Railway.
- W7 - 05-05-1972 Photostat copy of Order No. M.16021/2/72-LWI(I) of M/o. Labour, Government of India.
- W8 - 07-06-1972 Letter No. C.26 (j) /72 issued by the ALC @, Ernakulam to the Union.
- W9 - 04-10-1955 Office Order No. QEC/344 of Ex. Engineer, Southern Railway, Ernakulam.
- W-10 - 14-01-1956 Photostat copy of order No. QEC/409 and QEC/410 of the Executive Engineer, Southern Railway.
- W-11 - 16-07-1956 Office Order No. QEC/510 of the Executive Engineer, Southern Railway.
- W-12 - 30-09-1959 Photostat copy of office order No. QEC/114/S of Assistant Engineer-in-charge, Southern Railway.
- W-13 - 01-03-1972 Photostat copy of establishment matters- Annexure E.

W-14 - 30-10-1974	Photostat copy of Judgment in OP 3273/74 and connected OP's of the Hon'ble High Court of Kerala.	W-33 - 14-01-1956	Copy of Office order No.QEC/409 of Executive Engineer, Southern Railway, Ernakulam.
W-15 - 31-01-1975	Certified copy of Judgment In writ appeal Nos.33, 34, 37 and 38 of 1975 of the Hon'ble High Court of Kerala	W-34 - 18-01-1958	Copy of Order No.XEN/ERS of Assistant Engineers office, Quilon.
W-16 - 16-02-1982	Photostat copy of Judgment in SLP 1613/1979 of the Supreme Court of India (Reported in 1982(1) LLJ	W-35 - 16-09-1969	Copy of Order No.J /W /407 /IX by the Divisional Engineer/II/Olavakkod.
W-17 -	List of workers (copy of annexure to Reference).	W-36 - 08-03-1990	Copy of Memorandum No.V /P.407 / VII/CL issued by the Divisional Personnel Officer, TVM.
W-18 - 17-05-1961	Photostat copy of office order No.157 of the Executive Engineer.	W-37 - 27-11-1974	Photostat copy of Judgment in OP 2644/74 of the Hon'ble High Court of Kerala.
W-19 - 08-05-1964	Office Order No.309 of Executive Engineer, Virudhunagar, Southern Railway.	W-38 - 22-01-1974	Photostat copy of Judgment in OP 917/73 of the Hon'ble High Court of Kerala
W-20 - 18-02-1965	Page No.(1) of office Order No.398 of Southern Railway, Mana Madurai.	W-39 - 06-03-1979	Photostat copy of judgment in OP 1582/75 of the Hon'ble High Court of Kerala.
W-21 - 21-06-1965	Page No.(1) of office Order No.446 of Southern Railway, Mana Madurai.	W-40 - 28-11-1978	Photostat copy of Judgment in OP 2075/76.I. of the Hon'ble High Court of Kerala.
W-22 - 06-01-1968	Office Order No.208 of the Executive engineer, Southern Railway, Ernakulam.	W-41 - 03-06-1993	Photostat copy of Judgment in WA.622-1992 of the Hon'ble High Court of Kerala.
W-23 - 30-10-1968	Photostat copy of office order No.258 of the Executive Engineer, Southern Railway, Ernakulam.	W-42 - 06-04-1994	Photostat copy of Order in CP 125/83 of the Central Government Labour Court, Ernakulam (Labour Court, Ernakulam)
W-24 - 9-09-1969	Office Order No.335 of the Executive Engineer, Southern Railway, Ernakulam.	W-43 - 27-08-1971	Copy of letter No.P 363 /I/CN-Pilot issued by the Chief Engineer, Southern Railway, Chennai to Sri. L.Robert D'Souza.
W-25 - 22-11-1971	Copy of letter No.C.27 (3)/71 issued by the ALC to the workmen.	W-44 - 28-08-1971	Letter No.P-53 /CN-ERS issued by the Executive Engineer, Southern Railway to Sri.L.Robert D'Souza.
W-26 - 30-09-1972	Copy of letter No.P.574/CN-ERS issued by Southern Railway to the ALC 42, Ernakulam.	W-45 -	Statement showing particulars of all the C. I. Staff issued by the Executive Engineer, Southern Railway.
W-27 - 06-12-1972	Letter No.Dy.3640-Con-1 /72 issued by the Chief Labour Commissioner (Central) to the Union	W-46 - 30-09-2007	Photostat copy of letter issued by the Section Engineer (P.Way), Alwaye to the Labour Enforcement Officer (Central)
W-28 - 20-08-1971	Letter No.P-53/CN/ERS issued by the Ex. Engineer Southern Railway to the Union.	W-47 - 16-10-1986	Photostat copy of office order No.CL/24-1-86 of the Executive Engineer (construction), Ernakulam.
W-29 - 07-02-1972	Photostat copy of representation submitted by Union before the Union Minister for Labour.	W-48 - 10-10-1986	Copy of office order No.CL/24-1-86 of the Executive Engineer (Construction), Ernakulam.
W-30 - 21-07-1972	Copy of letter No.M-15025/15/72-LW1 of Ministry of Labour and Rehabilitation.	Exhibit for the Management	
W-31 - 21-10-1970	Copy of Order No.E(P&A) 1-70/IR-1.	MJ - 12-06-1974	Photostat copy of Order No.PC-72/RLT 89/3 of Railway Board.
W-32 - 03-03-1960	Copy of Order No.C/119/S of Assistant Engineer QE, Railway Construction, Ernakulam.		

नई दिल्ली, 11 सितम्बर, 2008

AWARD

का.आ. 2817.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार रेलवे इलेक्ट्रिकेशन के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, भुवनेश्वर के पंचाट (संदर्भ संख्या 40/2002) को प्रकटित करती है, जो केन्द्रीय सरकार को 11-9-2008 को प्राप्त हुआ था।

[सं. एल-41012/153/2001-आई आर(बी-1)]

बी. के. मनचन्दा, अनुभाग अधिकारी

New Delhi, the 11th September, 2008

S.O. 2817.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 40/2002) of Industrial Tribunal-cum-Labour Court No. 2, Bhubaneswar as shown in the Annexure in the Industrial Dispute between the management of Railway Electrification, and their workmen, received by the Central Government on 11-9-2008.

[No. L-41012/153/2001-IR (B-I)]

B. K. MANCHANDA, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-
CUM- LABOUR COURT, BHUBANESWAR

PRESENT

Shri N.K.R. Mohapatra,
Presiding Officer, C.G.I.T.-cum-Labour Court,
Bhubaneswar

Industrial dispute case No. 40/2002

Date of passing Award—7th August 2008

BETWEEN

The Management of (1) the Managing Director,
M/s. Oriental Security Services, 315-A,
Saheed Nagar, Bhubaneswar- 751 007,

(2) The Dy. Chief Signal & Telecom Engineer, Railway
Electrification, Bhubaneswar, B-23, Rail Vihar, S.E. Rly. Sub.
Post Office, Chandrasekharpur, Bhubaneswar, Orissa- 23.

...1st Party- Managements

And

Their Workman, Shri Pradip Kumar Behera,
C/o. A. Sahoo, Gr. No. 96-F, Type-D,
Rail Vihar, Chandrasekharpur, Bhubaneswar- 23.

...2nd Party- Workman.

APPEARANCES

Shri Prafulla Kr. Swain,
Authorized Representative.

For the 1st Party-
Managements.

Shri Pradip Kumar Behera

...For Himself-the
2nd Party-Workman.

The Government of India in the Ministry of Labour, in exercise of powers conferred by Clause (d) of sub section (1) sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) have referred the following dispute for adjudication vide their Order No. L-41012/153/2001-IR (B-I), dated 22-3-2002.

"Whether the action of M/s. Oriental Security Services, Contractor under Chief Project Manager, Railway Electrification by terminating the services of Shri Pradip Kumar Behera is justified? If not, what relief the workman is entitled?"

2. The Management No.1 is an establishment of providing security and other service to other establishment on contractual basis. Therefore, for execution of its work it had undertaken from Management No. 2, it had deployed the disputant and many others in 1998 to work within the premises of the said Management No. 2, herein after called the Principle Employer. On 21-7-2000 it served an office order to the disputant saying he was no more required to work in the premises of Principle Employer. In the letter he was directed to report in the head office. Characterizing this order to be an order of termination, the workman raised an Industrial Disputes alleging that he was vindictively terminated/thrown out of job on some false allegations of writing against the Management. It is claimed that the above order of the Management-1 amount to illegal retrenchment.

3. The Management No. 2, the Principal Employer, contended in his written Statement that it has nothing to do with the above order of the Management No. 1. Since the workman was withdrawn by the immediate employer on administrative grounds from working within the premises of the Management No. 2, the said Management is wholly answerable to the reasons of such withdrawal. The Management No.1, the immediate employer, on the other hand, alleges that since the workman was not sincere in his duties and was not of good behaviour towards the officers of Principle Employer, he was withdrawn on the complaint of the Management No. 2 for his re-engagement else where but the workman by dint of his own will had failed to report before the Head Office for his further engagement and as such the order passed by it on 21-7-2000 withdrawing the disputant from the establishment of the Management No. 2 does not amount to dismissal or termination under any law and therefore no illegality has been committed by it.

4. On the basis of the above pleadings of the parties the following issues were framed.

ISSUES

1. Whether the reference is maintainable?
2. Whether the action of the M/s. Oriental Security Services, Contractor, under Chief Project

Manager, Railway Electrification by terminating the services of Shri Pradip Kumar Behera is justified?

3. If not, to what relief the workman is entitled to?

5. The workman examined himself besides examining another and produced documents marked as Ext. 1 to 7. The Management No. 1 examined one witness and produced no documents. Management No. 2 has been set ex parte for its non-participation after filing Written Statement.

FINDINGS

ISSUE NO. I

6. Under Section 2 of the Industrial Disputes Act the Central Government is the appropriate Government in respect of a Railway Company and the reference being against one of the establishments of Railway Department and its contractor, the same is maintainable and entertainable by the Tribunal.

ISSUE NO. II & III

7. Keeping in view the pleadings of the parties the only question to be decided under these issues is whether the withdrawal of the disputant from working in the establishment of Management No. 2 by Management No. 1 amounts to retrenchment and if so whether it was in accordance with law or not.

8. Admittedly for discharge of its contractual obligation the workman was deployed by the Management No. 1 to work in the establishment of the Management No. 2 with effect from 10-5-1998. M.W. No. 1, examined on behalf of the Management No. 1, deposed that the workman was withdrawn on administrative ground as he misbehaved some of the officers of the Principal Employer (Management No. 2). But the Principal Employer (Management No. 2) is found totally silent about such allegation being made by him. Therefore the only alternative opened to the Court is to examine the case with reference to other surrounding circumstances.

9. The office order (Ext.-1) which was issued to the workman withdrawing him from the establishment of the Management No. 2 reads as under:-

On administrative point of view Shri Pradeep Behera, Peon deployed at premises of CSTE/RE/BBSR is no more required to continue with immediate effect from 21-7-2000. As such he is directed to report the undersigned at OSS Hqr. At once for further consideration.

10. The reply of the Management No. 1 given to Asst. Labour Commissioner (Central) during conciliation proceeding shows that while working in the establishment of the Principal Employer the workman had tried to be absorbed permanently in the establishment of the Management No. 2 and so much so had demanded the

salary with arrears at par with a permanent employee of Management No. 2 and to enrich his said end had also written to various authority. If the letter of withdrawal (Ext.-1) is examined in the above back-drop, it would lead to the foregone conclusion that the intention of the said Management behind such withdrawal was not to deploy the workman elsewhere but with a view to get rid of him and his several allegations made to higher authority. It was argued by the Management No. 1 that the workman was withdrawn from the establishment of the Management No. 2 with a view not to terminate him but with a view to engage him elsewhere. If that was the real intention of the Management No. 1 it could not have omitted to mention such fact while issuing Ext.-1. During trial the Management Witness stated that after the withdrawal of the workman he was asked/deployed to work in the office of the B.D.A. but in his bid to work in his previous place had refused to join there. But such of the evidence of the M.W.-1 cannot be believed in any probability as no document has been produced in support of the same. Therefore, it is held for the discussion made earlier that in the garb of withdrawing the workman he was really terminated from service without any retrenchment compensation or notice as required under Section 25-F of the Industrial Disputes Act.

11. In the above premises the action of the Management No. 1 is held to be bad under law. If further work is available the workman may be engaged there with compensation of Rs. 5,000 towards his back wages and if no such work is available the workman may be paid a consolidated amount of Rs. 15,000 in lieu of his reinstatement and back wages.

12. Reference is answered accordingly.

N. K. R. MOHAPATRA, Presiding Officer

LIST OF WITNESSES EXAMINED ON BEHALF OF THE 2nd PARTY-UNION.

W.W.1- Pradeep Kumar Behera

W.W.2- Sumantra Mohapatra.

LIST OF DOCUMENTS EXHIBITED ON BEHALF OF THE 2nd PARTY-WORKMAN.

Ext.-1-Copy of the office order No. 387/OSS, dated 21-7-2000 stating the termination of the workman.

Ext.-2-Copy of the statement of the workman dated 24-8-2000 given to the Management explaining his innocence.

Ext.-3-Copy of the written statement filed by the Management before the A.L.C. (CY), Bhubaneswar.

Ext.-4-Copy of different representations of the workman made to the Management of Railway to provide him engagement.

Ext.-5-Copy of the postal receipts under which the representations of the workman had been sent to the Railway authority.

Ext.-6-Copy of the orders of the Hon'ble High Court in M.C. No.3428 of 2001.

Ext.-7-Order of the Hon'ble High Court in O.J.C. No. 3371 of 2001.

LIST OF WITNESSES ON BEHALF OF THE 1st PARTY-MANAGEMENT

M.W.-1-Shri Ajaya Kumar Swain

LIST OF DOCUMENTS EXHIBITED ON BEHALF OF THE 1st PARTY-MANAGEMENT

The Management have not exhibited any documents.

नई दिल्ली, 11 सितम्बर, 2008

का.आ. 2818.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार कोंकण रेलवे को. लि. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-2, मुंबई के पंचाट (संदर्भ संख्या 50/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11-9-2008 को प्राप्त हुआ था।

[सं. एल-41011/12/2002-आईआर(बी-1)]

बी.के.मनचन्दा, अनुपाग अधिकारी

New Delhi, the 11th September, 2008

S.O. 2818.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 50/2002) of Industrial Tribunal-cum-Labour Court No.-2, Mumbai as shown in the Annexure, in the Industrial Dispute between the management of Konkan Railway Corporation Ltd. and their workmen, received by the Central Government on 11-9-2008.

[No. L-41011/12/2002-IR(B-I)]

B.K. MANCHANDA, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-NO. 2, MUMBAI

PRESENT

A.A.Lad, Presiding Officer

Reference No. CGIT-2/50 of 2002

Employers in relation to the management of Konkan Railway Corporation Ltd., Navi Mumbai

The Chief Personnel Officer
Konkan Railway Corporation Ltd.
Belapur Bhayan, Sector- 11
CBD Belapur
Navi Mumbai-400 614

And

Their Workmen

The Vice President
Nhava Sheva Port & General Workers Union
Port Trust Kamgar Sadan, 2nd floor
Nawab Tank Road, Mazgaon
Mumbai-400 010

APPEARANCES

For the Employer : Mr. P. N. Kilpady
Advocate.

For the Workmen : Mr. J. H. Sawant
Representative.

Mumbai, dated 12th June, 2008

AWARD

The Government of India, Ministry of Labour by its Order No.L- 4101/12/2002-IR (B-I) dated 12-6-2002 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following dispute to this Tribunal for adjudication.

"Whether the action of M/s. Konkan Railway Corporation Ltd., Navi Mumbai in not classifying the six workmen, whose names are shown below, as Artisan in the scale of 3500-4590 w.e.f. 1-4-1996 is justified? If not, what relief the workmen are entitled?

2. Claim Statement is filed at Ex-7 which was replied by first party at Ex-8. Rejoinder was filed by the Representative of workman at Ex-9. Issues were framed at Ex-10 and matter was fixed for evidence and even evidence was recorded to some extent.

3. However by Ex-31, both parties approached this Tribunal and requested to dispose of reference since they settled the dispute out of court. Hence the order:

ORDER

In view of purshis Ex-31

Reference is disposed of.

Date: 12-6-2008

A.A.LAD, Presiding Officer

Exh. No. 31

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

REFERENCE NO. CGIT-2/50 OF 2002

Konkan Railway Corporation Ltd.....First Party

V/s.

Their workmen S/Shri Jitendra Tiwari and 5 others
represented by Nhava Sheva Port and General
Workers Union.....Second Party

Application for disposal of the Reference proceedings in view of the First Party's letter dated 5-5-2008 accepting the terms of settlement stated in the second party's joint representation dated 28-4-2008.

MAY IT PLEASE YOUR HONOUR :

The Second Party workman bag to submit the present application for disposal of the Reference proceedings as the First Party by its letter No.KR/CO/P/16/Mech. dated 5-5-2008 has kindly agreed the conditions of settlement stipulated in the joint representation dated 28-4-2008 submitted to the First Party by the Second Party workmen. Copies of the First Party's letter dated 5-5-2008 and the joint representation dated 28-4-2008 may please be taken on record and this Hon'ble Tribunal may be pleased to dispose of the Reference proceedings as settled between the parties and oblige.

Mumbai,

Dated: 9-5-2008

(Jitendra Tiwari)

(Dayanand Shetty)
Sr. Chief Personnel Inspector,
K.R.C.L.

(Bijaykumar Sahoo)

(Mangesh Kalamkar)

(R. Surve)

(Rajesh M.T.)

(Ajay Kumar)

Second Party Workmen

(Jaiprakash Sawant)

Representative
Nhava Sheva Port & General
Workers Union

Identified by me,
(Prakash Kiliyady)
Advocate for First Party

KONKAN RAILWAY CORPORATION LTD.

A GOVERNMENT OF INDIA UNDERTAKING

No. KR/CO/P/16/MECH.

Date 5-5-2008

To,

RRM/KW

Sub.: Settlement of Industrial disputes- Case of Shri Jitendra Tiwari and 5 others.

Ref.: (i) This office letter No. KR/CO/P/16/MECH dated 17-4-2008.

(ii) Joint Representation of Shri Jitendra Tiwari and 5 others dated 28-4-2008.

Reference above, the joint representation from Shri Jitendra Tiwari and 5 others dated 28-4-2008 received through RRM/KW has been examined. It is informed that the conditions indicated in their letter were already accepted by the management and mentioned in the letter No. KR/CO/P/16/MECH dated 17-4-2008 except the retention of

Shri Jitendra Tiwari and 5 others in the same place of working as requested.

At present, they may be retained at their present place of working but it should be clarified transfer is a condition of service and needbased.

Please advise the concerned employees accordingly and to withdraw petition filed before the Hon'ble Central Government Industrial Tribunal, immediately, to enable to take further necessary action in the matter.

Nalinakshian T.

Dy Chief Personal Officer

From Jitendra Tiwari and 5 others

Date: 28-4-2008

To,
Chief Personnel Officer
Konkan Railway Corporation Ltd.
CBD Belapur, Navi Mumbai
(Through RRM/KW)

Respected Sir,

Sub: Settlement of Industrial dispute reg.....

We, The undersigned, workmen I beg to submit that we are willing to settle our industrial dispute pending before the Central Government Industrial Tribunal No.2, Mumbai in reference No. CGIT-2-50 of 2002 in following terms:-

(i) That six workmen named in the reference order dated 12-6-2002 shall be granted the pay scale of Rs. 4000-6000 w.e.f. 20-2-1998 in the post of Technician-1 by awarding the proforma fixation in that grade by continuity of service for the first time bound promotion in the scale of 4500-7000 w.e.f. 25-1-2006 all the benefits of seniority and promotional opportunity but without back wages on account of grant of said pay scale w.e.f. 20-2-1998 and further we will be paid the back wages of Time bound promotion w.e.f. 25-1-2006 and we will be retained the place of working as it is.

(ii) The industrial dispute will be withdrawn immediately on receipt of the communication/order in the above term (i) with a period of one week.

Thanking you,

Yours faithfully,

- (1) Jitendra Tiwari
- (2) Bijay Kumar Sahoo
- (3) M. Kalamkar
- (4) R. Surve
- (5) Rajesh-MT
- (6) Ajay Kumar

नई दिल्ली, 11 मिनम्बर, 2008

का.आ. 2819.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार कोकण रेलवे

को. लि. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण मुंबई-2 के पंचाट (संदर्भ संख्या 50/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11-9-2008 को प्राप्त हुआ था।

[सं. एल-41012/178/2003-आई आर(बी-1)]

बी. के. मनचन्दा, अनुभाग अधिकारी

New Delhi, the 11th September, 2008

S.O. 2819.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 50/2003) of Industrial Tribunal-cum-Labour Court No. 2, Mumbai as shown in the Annexure, in the Industrial Dispute between the management of Konkan Railway Corporation Ltd., and their workmen, received by the Central Government on 11-9-2008.

[No. L-41012/178/2003-IR (B-1)]

B. K. MANCHANDA, Section Officer

ANNEXURE

BEFORE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL No. 2, MUMBAI

PRESENT

A. A. Lad, Presiding Officer

Reference No. CGIT-2/50 of 2003

Employers in relation to the management of Konkan Railway Corporation Ltd., Navi Mumbai

The Chief Personnel Officer,
Konkan Railway Corporation Ltd.,
Belapur Bhavan, Sector-1,
Plot No. 6, CBD Belapur,
Navi Mumbai-400 709

AND

Their Workmen

Mr. M. Madhav Kumar,
SS-II, Room No.147,
Sector-6,
Kopar Khairane,
Navi Mumbai-400 709.

APPEARANCES

For the Employer : Mr. P.N. Kilpady, Advocate.

For the Workmen : Mr. V. Narayanan, Advocate

Mumbai, dated 11th June, 2008.

AWARD

The Government of India in the Ministry of Labour, by its Order No. L-41012/178/2003-IR (B-1) dated 22/28-8-2003 in exercise of the powers conferred by clause

(d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following dispute to this Tribunal for adjudication :

“Whether the action of the management of M/s. Konkan Railway Corporation Ltd., in imposing the punishment of compulsory retirement from the services on Shri M. Madhavkumar w.e.f. 5-3-2002 is legal and justified? If not, what relief is the workman is entitled?

2. Claim Statement is filed by the concerned workman at Ex-6 stating that he joined Konkan Railway Corporation Ltd. on 21-10-1996 as per appointment order issued by Dy. Chief Personnel Officer, Konkan Railway Corporation Ltd., Belapur. He worked as ‘Line Peon’ on temporary category upto 20-4-1997. Thereafter he was continued from 20-4-1997 and then taken on permanent basis under employment No. 1300. He was getting all benefits of permanent employee however without any reason he was terminated on 26-8-2001.

3. When he was appointed as Line Peon he was working under D.N. Mahajan, Dy. Chief Engineer and doing work in his House at Nerul Quarters. He was attending work from 7.00 a.m. upto 9.00 p.m. and providing household services to wife of Mahajan. He was also supposed to look after the children of Mahajan including taking them to school and bringing them back from school. Even he was asked to obey Mrs. Mahajan’s order and he was doing all that sincerely and without any complaint. Even in his absence his wife was called for work. If remained absent he was called through Driver and as such his services were utilised fully by Mahajan family.

4. During 31-7-2001 to 24-8-2001 he remained absent because of his sickness. He wanted to go to his native place. Even he informed that fact to Mahajan and his wife. When he went to his native place, he learnt that, his father was also sick so he had to stay there. He informed all that to Mahajan.

5. According to second party, he worked for 5 years continuously and provided his services to Mahajan family. Then he suffered from jaundice and when he informed to Mahajan family, said was taken by Mahajan family otherwise and instead of granting leave and permitting him to remain absent, at the instance of Mahajan, showcause notice was served on him. After recoering from sickness when he reported on duty, but he was not allowed to report. The medical certificate submitted by concerned workman of private practitioner was not accepted by Mahajan and Konkan Railway Corporation Ltd. and even he was not heard and action was taken by Konkan Railway Corporation Ltd. biasly by awarding punishment of termination. So second party prayed to set aside order of termination with direction to first party to take him in the employment and give him benefits of backwages with continuity of service.

6. It is disputed by first party by filing reply Ex.-10 making out case that, second party cannot raise dispute individually as there is no support of union. It is further stated that, he was appointed as temporary employee and on daily wages of Rs.67 w.e.f. 26-10-1996. He was having habit of remaining absent unauthorisedly. He was served with memo dated 6-12-1999, 13-3-2001 and 9-4-2001. Even he was suspended during the period 13-7-2001 for habitual absenteeism still he did not improve in his absenteeism. So chargesheet dated 6-8-2001 was served about his absenteeism from 31-7-2001. Reply given by second party was considered by Inquiry Officer. Opportunity was given to concerned workman and relying on that, punishment of termination was imposed. Then he preferred appeal on it and Appellate Authority made change in the order of termination and passed order of compulsory retirement. According to first party, second party cannot challenge the order of termination or order of compulsory retirement and cannot pray for reinstatement as action was taken by following due process of law. So it is prayed that, prayer prayed by second party of reinstatement with benefits of backwages be dismissed.

7. Said reply is challenged by second party by filing rejoinder at Ex-11 sticking with his case of information given about his sickness to Mahajan family and making out case that, order of termination be set aside.

8. In view of above pleadings issues were framed at Ex-15 which are answered as follows:—

Issues	Findings
(i) Is enquiry fair and proper.	No.
(ii) Is findings not perverse?	Findings perverse
(iii) Is termination under reference legal?	No.
(iv) Is second party entitled to any other relief?	Yes, by way of reinstatement but without backwages.
(v) What order?	As per order below.

REASONS

Issues Nos. 1 & 2 :

9. case of the second party is that, he worked with first party as Line peon from 1997. Then he was posted at the house of Mahajan and he worked there till 2001. As far as work done by second party at Mahajan's house from 1997 to 2001 is concerned, is not seriously disputed by first party. Case of the first party is that, he was appointed on temporary basis on daily wages and by following due process of law, he was terminated.

10. Second party filed his affidavit in lieu of examination-in-chief at Ex-16 where he made out case that, enquiry was not conducted properly. He stated that, there was no enquiry. He himself and Inquiry Officer were only present. No evidence was recorded nor was he allowed to represent himself through his representative. In the cross he admits that he did not apply to be represented through advocate. He admits that, enquiry was conducted by Prasanna Kumar. He admits that, he knows 'Telugu' language. He admits that, enquiry was explained to him in his language. He states that, whatever going on in the enquiry was explained to him and when questioned he states that it was just conveyed saying that enquiry was going on and he has to sign the proceedings. When question was asked as to why he remained absent, he explained that, on account of his sickness of his father he remained absent. He examined his wife at Ex-19 as well as examined Mahajan and Mrs. Mahajan at Ex-25 and 26 respectively. It is pertinent to note that, Mahajan and his family admit that second party was serving in their house and remained absent after termination. He also admits that, when he returned back, he was sent for medical and he was not permitted to report on duty. It is also admitted by Mahajan that, when he was sent for Medical, he was on authorised leave. Even wife of Mahajan admits that, he was working in her house and also attending office after that. Both also admit that, except absenteeism, there is not other complaint about work of second party. Both admit that they were not examined as witnesses in the inquiry.

11. If we peruse the documents produced by first party with Ex-17 we find that Konkkan Railway Corporation has produced plain copy of correspondence and enquiry report as well as some questions and answers written by Inquiry Officer which reveals that there was only Inquiry Officer and this workman present. There was no any Presenting Officer for Konkkan Railway Corporation Ltd. nor defence representative for his workman. Even there was no any witness examined by first party. Even no cross of any witness appeared from the second party side or even from first party side. This proceeding does not reveal that witnesses were called and they were examined before Inquiry Officer or cross examined. In fact, Mahajan's family was expected witnesses. But they are admittedly not examined in domestic enquiry. The way in which enquiry appears conducted, it reveals that some interrogation took place between Inquiry Officer and concerned workman. All these reveal that Inquiry Officer was questioning the second party and second party was answering it. So from this it cannot be said that it is an enquiry as expected and it cannot be called as a 'domestic enquiry'. This Inquiry Officer sits on his own ideas in deciding procedure of recording evidence and following it concluded about absenteeism of second party workman. It is also admitted fact that no witness was examined by the first party Konkkan Railway Corporation Ltd. No opportunity was given to the

second party to put up his case with the help of representative. No intimation was given to second party workman that he can bring his representative or witnesses in the enquiry. Even no documents are called for. On the contrary, documents on record reveals that second party has submitted medical certificates of private doctors about his absenteeism and first party ignored those, saying that, said certificates are not certificates of doctor from the panel of Konkan Railway Corporation Ltd. It is not pointed out, who are the panel doctors? and before whom he was supposed to attend. All these reveal that, it was not an enquiry and Inquiry Officer was not having any reason to conclude concerned workman as absent without intimation. Letter dated 13-3-2001 reveals that second party workman intimated about absenteeism but without medical certificate of panel doctor. It is revealed that, he produced medical certificate of Private doctor but not medical certificate of Doctor who is on the panel of Konkan Railway Corporation Ltd. It reveals that, he intimated first party as per his ideas but it was not considered by first party. So according to me, the way in which enquiry was conducted and the way in which findings was given is not proper and I have to observe enquiry is not fair and proper and findings perverse. Accordingly, I answer these issues to that effect.

Issue No. 3:

12. When on such type of enquiry findings is given by Inquiry Officer one has to declare that, it is not legal and just finding. Even it cannot be treated that the decision taken on such finding of termination and then of compulsory retirement is just and proper. So I conclude decision of removal either by way of compulsory retirement or by way of termination is not just and proper.

Issue No. 4:

13. Second party prayed for reinstatement with backwages and continuity of service. As far as his services with first party is concerned, first party agree that second party served from 1996 till his termination. First party tried to make out case that, he was on daily wages but tenure spent by second party and continuous working with first party give him protection of 'workman' as he has completed more than 245 days in each calendar year. Besides Mahajan's family admit that, second party served with them and they have no complaint except his absenteeism. When he is absent, naturally he is not entitled to wages of that period. Even first party's ground to remove second party was of absenteeism without permission or intimation. But according to me, that ground is not just and proper. So in my considered view second party must be reinstated but without backwages.

14. In view of discussions made above, I conclude that reference of second party required to be allowed partly hence the order:

ORDER

(i) Reference is allowed partly.

(ii) First party Konkan Railway Corporation Ltd. is directed to reinstate second party workman Shri Madhavkumar in its employment from the date of receipt of this order on the post on which he was working at the time of his termination.

(iii) Prayer of second party to give backwages is rejected.

A. A. LAD, Presiding Officer

Date: 11-6-2008

नई दिल्ली, 11 सितम्बर, 2008

का.आ. 2820. — औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, कोंकण रेलवे को. लि. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-2, मुम्बई के पंचाट (संदर्भ संख्या 91/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11-9-2008 को प्राप्त हुआ था।

[सं. एल-41012/64/2001-आई आर (बी-1)]

बी. के. मनचन्दा, अनुपाग अधिकारी

New Delhi, the 11th September, 2008

S.O. 2820. — In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 91/2001) of Industrial Tribunal-cum-Labour Court No.-2, Mumbai as shown in the Annexure, in the Industrial Dispute between the management of Konkan Railway Corporation Ltd., and their workmen, received by the Central Government on 11-9-2008.

[No. L-41012/64/2001-IR(B-I)]

B.K. MANCHANDA, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-NO.2, MUMBAI

PRESENT

A.A. Lad, Presiding Officer

Reference No. CGIT-2/91 of 2001

Employers in Relation to The Management of Konkan Railway Corporation Ltd.

The Regional Railway Manager,
Konkan Railway Corporation Ltd.,
Karwar,
Karnataka State
Pin 581 306

AND THEIR WORKMEN

Shri B. Premjit
Sreedevi - Marunpalli
P.O. Pudukpanam
Badagara - 673 105
Kerala State.

APPEARANCES:

FOR THE EMPLOYER : Mr. Gurunath Naik
Advocate.

FOR THE WORKMEN : Mr. J.H. Sawant
Advocate.

Mumbai, dated 30th June, 2008.

AWARD PART-I

The Government of India, Ministry of Labour, by its Order No.L- 41012/64/2001/IR (B-1) dated 20-7-2001 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following dispute to this Tribunal for adjudication:

“Whether the action of the management of Regional Railway Manager, Konkan Railway Corporation Ltd., Karwar in terminating the services of Shri B. Premjit, Foreman w.e.f. 30-12-1999 is legal and justified? If not, to what relief the workman is entitled for?”

2. Claim Statement is filed by the concerned workman at Ex-8 making out case that, he was employed with first party as ‘Foreman’ w.e.f. 3-5-1991. In 1998 he fell sick and proceeded on leave w.e.f. 5-10-1998 to enable him to avail medical treatment from an expert orthopaedic at his native place. Accordingly, he underwent treatment from the Superintendent, Orthopaedic Surgeon of the Government Hospital at Kerala and thereafter from Calicut and further from Sr. Medical Officer, Government Ayurvedic Hospital, Batakara. During that period, he was informing first party about his position and requesting to sanction leave and not take any disciplinary action against him about his absenteeism.

3. After recovering from the said illness, he reported on 21-1-1999 with medical fitness certificates of the competent authority. However he was not permitted to report on duty. He was asked to report to Chief Medical Officer, KRCL Belapur, Navi Mumbai. On 30-12-1999 he was examined by Chief Medical Officer who asked second party workman to report before Chief Engineer & Regional Railway Manager. Workman reported accordingly. However he was not permitted to report and letter dated 30-12-1999 was handed over to him on 11-1-2000 issued by Chief Engineer, Balakrishnan informing that he was removed from services with immediate effect. On that he preferred appeal and made representation.

4. Second party further state that, Chief Engineer by his letter dated 10-5-2000 informed second party that, Appellate Authority will decide on his grievances and he was asked to appear before Appellate Authority on 20-5-2000 for personal hearing. Chief Engineer gave personal hearing on 1-6-2000 and 2-6-2000. Infact in that personal hearing second party was cross examined by the Chief Engineer and by letter dated 2-6-2000 he submitted documents i.e. letter of Dr. P.T. Gopalan, Dr. P. Ummer and note of Enquiry Officer. On that second party was asked to give reply which was replied by him on 14-6-2000.

5. He further states that, Appellate Authority by letter dated 11-9-2000 confirmed the punishment of removal from services imposed by Chief Engineer. So he states that, the enquiry conducted which was ex-parte is not an enquiry. No opportunity was given to him. He was not permitted to appoint defence representative. No evidence was before Enquiry Officer of the first party. So he prayed to quash and set aside the enquiry and findings given by Enquiry Officer vis-a-vis decision taken of removal with request to direct first party to take him in the employment.

6. This is disputed by first party by filing reply at Ex-9 stating that, second party is not a ‘workman’. He was appointed as a Foreman. He was taking salary of Rs. 5,500 p.m. Besides duties assigned were of Foreman. He was assigned charge of welding plants and supervising work of employees working there. Since he is not ‘workman’, he cannot seek protection under provisions of Industrial Disputes Act.

7. It is further stated that, second party remained absent unauthorised without taking leave or prior permission between 15-10-1998 to 20-12-1999. Actually during that period, he was engaged in partnership business run in the name of M/s. Solid Bonds and nature of business was specialized in Rail Gas Pressure Welding Works at 709, 4th A cross, 7th Main, 1st Block, Kalyan Nagar, Bangalore-560 043. According to first party, he was doing business with partner and was not sick as pretended by him. Even he has not produced medical certificate and X-Ray report though he was claiming that, he was taking treatment from Orthopaedic.

8. First party issued charge sheet dated 29-4-1999 asking second party to appear in the inquiry. Even intimation letter was issued to second party to report in the enquiry but he fully neglected to participate in the enquiry. So, at last enquiry was concluded ex-parte. Even he was given personal hearing by the Chief Engineer where second party noted that, he is busy with his private work. Even medical certificate produced by him were bogus. The investigating machinery of first party enquired about the second party's business by appointing one enquiry officer, Mr. P.V. Mathew who visited the residence of second party to verify his sickness on 29-9-1999. On that day he found second party was not present at his house and his brother

Mr. Ajit was present who informed Mathew that, second party had gone to Bangalore to meet his business partner. Then Mr. Mathew talked to second party on mobile offered by brother of second party. Even he handed over visiting card of the company run by second party and his brother. Even second party talked on phone with Mathew from Bangalore. Mathew submitted report accordingly. On relying on this report of Mr. Mathew, first party concluded second party is not sick and has taken disadvantage of his sickness which reveals that, he is not interested in the service of first party and so he remained absent in the enquiry as well as on duty. It is further stated that, personal hearing was given. Even in that he was not able to make out his case and prove his sickness during his absence. It is further stated that, he unable to satisfy first party about fitness certificate and date of issuing of said, since fitness certificate was obtained by Kerala doctor on 21-12-1999 and on the very day he appeared in the office with that certificate. All these reveal that, he purposely remained absent since not interested in the services of first party. So it is contended that, action taken of removal is just and proper and does not require any interference.

9. In view of above pleadings my learned Predecessor framed issues at Ex-11. Out of those, issues No.1 & 2 which are on the point of fairness of enquiry and finding of enquiry officer are treated as preliminary issues, which I answer as follows :

Issues	Findings
(i) Whether the domestic inquiry conducted against the workman was as per the Principles of Natural Justice?	No
(ii) Whether the findings of the inquiry officer are perverse?	Yes

REASONS

ISSUE NO. 1 & 2 :

10. These issues are on the point of fairness of enquiry and findings of enquiry officer. Admittedly there was no enquiry since second party did not appear before enquiry officer. Even second party did not lead evidence on the point of absenteeism or sickness and filed purshis at Ex-17 reporting that he do not want to lead evidence on point of enquiry. Against that first party has examined Mr. Mathew by filing an affidavit in lieu of Examination in Chief at Ex-19 who speaks about his visit to house of second party and about absence of second party at his house. He also spoke on the point of business run by second party in the house and about his talk with second party over telephone, who was at Bangalore. So the evidence led by both is not connected with enquiry and findings of it.

11. But it is matter of record that, enquiry was not conducted since second party did not participate in the

enquiry. The documents produced by first party with list Ex-12 reveals that personal hearing was given to second party workman by the Chief Engineer who actually put questions to second party and recorded the answers of it. Except that, there is no evidence. So the enquiry which is on record cannot be called as 'enquiry'. The findings given by enquiry officer are not on the basis of documents and evidence led by both. So definitely when there was no enquiry, question of deciding whether it is fair and proper and findings of enquiry officer perverse does not arise.

12. Second party filed written arguments at Ex-23 whereas first party at Ex-24 alongwith copy of four judgments including judgment published in 1995 (1) LLJ 113, 2001 LLR 825, 2003 (98) FLR 507 and citation published in 1993 LAB IC 324. All these citations are on the point of domestic enquiry and findings of it where employee did not attend the enquiry on the date given. The facts of those cases are different than facts of this case. As far as citation no.1 is concerned, it is pertaining to burden of proof where burden to led evidence was casted on workman to show that enquiry is not fair and proper. In the instant case, no evidence was led by second party but when admittedly second party did not appear in enquiry and no any evidence was recorded by Enquiry Officer, question of proving that, there was no enquiry does not arise. Second party has filed Written Arguments at Ex-23 repeating the same facts which are stated in the Claim Statement.

13. So instead of wasting time on deciding whether enquiry fair and proper when actually there is nothing on record on enquiry, I conclude that, there was no enquiry and findings given by enquiry officer is perverse.

14. Status of second party is challenged by first party saying he is not workman. No cognizance of it is taken by the second party. So one has to decide that issue of 'workman' as it comes in the way of relief of second party. So I answer these issues to that effect and direct parties to appear in the reference on the point of 'workman' and on the point of justification of action taken by first party. Hence the order:

ORDER

(i) Enquiry not fair and proper.

(ii) Findings perverse.

(iii) Both parties to attend in the reference on the point of 'workman' and on the point of 'justification of action' taken by first party.

Date: 30-6-2008

A. A. LAD, Presiding Officer

नई दिल्ली, 12 सितम्बर, 2008

क्र.आ. 2821.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार केनरा बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबन्ध

में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, चण्डीगढ़ के पंचाट (संदर्भ संख्या 5/92) को प्रकटित करती है, जो केन्द्रीय सरकार को 11-9-2008 को प्राप्त हुआ था।

[सं. एल-12012/336/91-आई आर (बी-II)]

राजिन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 12th September, 2008

S.O. 2821.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 5/92) of the Central Government Industrial Tribunal-cum-Labour Court No. I, Chandigarh as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Canara Bank and their workmen, which was received by the Central Government on 11-9-2008.

[No. L-12012/336/91-IR (B-II)]

RAJINDER KUMAR, Desk Officer

ANNEXURE

**BEFORE SHRI GYANENDRA KUMER SHARMA,
PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR
COURT-I, CHANDIGARH**

Case No. I.D. 5/92

Sh. Arun Ghai, Assistant General Manager, Canara Bank
Staff Union, B-XI, 1662, Rari Mohalla, Ludhiana (Pb).

....Applicant

Versus

Deputy General Manager, Canara Bank, Circle Office,
Sector 34-A, Chandigarh.

.....Respondent

APPEARANCES

For the workman : Sh. B.J. Singh

For the management : Sh. Ashok Jagga.

AWARD

Passed on 3-9-08

The Government of India vide Order No. 12012/336/91-IR (B-II) dated 10-2-92 referred the following industrial dispute for the judicial adjudication.

“Whether the action of the management of Canara Bank in not including the name of Sh. Arun Ghai in seniority list of Special Assistant notified on 31-3-91 and inducting his juniors is justified? If not, to what relief is the workman entitled?”

It is clear from the statement of claim, written statement and other materials on record that the workman was an employee of Erstwhile Laxmi Commercial Bank which

were amalgamated with the Canara bank on 23rd of August, 1985 with the scheme of amalgamation. As per the scheme of amalgamation, the workman, along with the other employees of Erstwhile Laxmi Commercial Bank was placed in the seniority list and his name was listed at column No. 13 with 79 points. Aggrieved with this list, the workman raised an industrial dispute and on account of failure of conciliation proceedings, Central Government referred the reference for judicial adjudication to this Tribunal. I have heard learned counsels for the parties and perused entire materials on record. The main contentions which are the cause of concern to the workman are:-

1. Seniority ratio of 1 : 1 for counting service is wrong. The workman is entitled to credit for full length of service with Erstwhile Laxmi Commercial Bank as well as Canara Bank.

2. The Canara Bank while deciding the service conditions of the employees who had been the employees of Erstwhile Laxmi Commercial Bank before amalgamation, has counted the length of service after excluding period of probation while the period of probation should have been counted in the service while determining the length of service.

3. The criteria of qualification for promotion which was taken over under settlement, dated 19-11-85, was bad in law.

The amalgamation scheme is on record. I have gone through the scheme of amalgamation. It is undisputed that before amalgamation both of the banks were A Class banks. After the amalgamation, the Canara Bank was supposed to extent the service conditions of its employees to the employees of the Erstwhile Laxmi Commercial Bank. The Canara Bank extended the benefits of service conditions of Canara Bank to the employees of Erstwhile Laxmi Commercial Bank w.e.f. 1-10-85. On 3-10-85, a memorandum of settlement arrived in between the Canara Bank Workers' Union and the management of the Canara Bank. As per the above statement, the service weightage for the service in Erstwhile Laxmi Commercial Bank was to be reckoned in the ratio of 1.5:1, meaning thereby, one and a half years of service in the Erstwhile Laxmi Commercial Bank was reckoned as one year of service in the Canara Bank. The dispute arises on it and a writ petition (civil) No.685/86-1475/86 was filed by All India Canara Bank Union Officers against the management of Canara Bank. Hon'ble Supreme Court dismissed the petition with the observation that Banking Regulation Act, 1949, proviso to, Section 45 (5) (1) and Clause (12) of the scheme of amalgamation framed by the Reserve Bank of India under Section 45 (4) of the Banking Regulation Act, which received sanction from the Central Government under sub-section 7 thereafter, provided that in the event of any difference or doubt arising in the matter of equation of post made by the transferee bank pursuant to the scheme, the party aggrieved shall be

at liberty to make a reference to the Reserve Bank of India under aforesaid proviso. The writ petition was dismissed with the direction that if the party raised any such objection, the Reserve Bank of India shall enter upon the reference and deal with the same in accordance with the law.

A reference was accordingly made to the Reserve Bank of India and Reserve Bank of India decided the reference that weightage of service in the ratio of 1.5:1 granted to the employees of Erstwhile Laxmi Commercial Bank is reasonable. While passing the order, the Reserve Bank of India in Para 5 specifically mentioned that Erstwhile Laxmi Commercial Bank Ltd. and Canara Bank Ltd. were both A class Banks and the duties discharged by the various categories of the employees of the Erstwhile Laxmi Commercial Bank Ltd. were prematric to the duties discharged of the various categories of employees of Canara Bank. Though Erstwhile Laxmi Commercial Bank Ltd. was A Class Bank, most of its branches were medium and small branches with limited operations and the employees had, therefore, limited exposure. Hence, considering the quality of service, the efficiency of the organization and the range of volume of the business transacted, the Reserve Bank of India is of the opinion that although, Erstwhile Laxmi Commercial Bank Ltd. was an A Class Bank, the experience given by its employees cannot be equated with the employees of the Canara Bank.

I have gone through the scheme of amalgamation as well. Para 12 of scheme of the amalgamation reads as under:—

"The transferee bank shall, on the expiry of period not longer than three years from the date on which this scheme is sanctioned, pay or grant to the employees of the transferor bank the same remuneration and the same terms and conditions of service as are applicable to the employees of corresponding rank or status of the transferee bank subject to the qualifications and experience on the said employees of the transferor bank being the same as or on the said employees of the transferor bank being the same as or on the said employees of the transferor bank being the same as or equivalent to those of such other employees of the transferee bank.

Provided that if any doubt or difference arises as to whether the qualifications or experience of any of the said employees are the same as or equivalent to the qualifications and experience of the other employees of corresponding rank or status of the transferee bank or as to the pay of the employees in the scales of pay of the transferee bank, the doubt or difference shall be referred to the Reserve Bank of India whose decision thereon shall be final."

On perusal of the materials on record, it is evident that under Paragraph 12 of the amalgamation scheme,

settlement was made between the Workers' Union of Canara Bank and the management of Canara Bank on 30-10-85, in which the service ratio 1.5:1 in between the Erstwhile Laxmi Commercial Bank and the Canara Bank was settled. As per the proviso of Para 12 of the amalgamation scheme, in the case of any dispute the reference should have been made to the Reserve Bank of India. It was accordingly made and the Reserve Bank of India has made it clear that the service weightage of the service in the Erstwhile Laxmi Commercial Bank was reckoned in the ratio of 1.5:1 meaning thereby, every one and a half years of service in the Erstwhile Laxmi Commercial Bank is reckoned as 1 year of service in the Canara Bank was reasonable. Hon'ble Apex Court in above mentioned two writ petitions has also made it clear that the decision of Reserve Bank of India as per the amalgamation scheme will be final. Thus, the ratio of reckoning the service weightage of 1.5:1 is final and it cannot be interfered by this Tribunal while answering this reference.

A new question has been raised by the workman that while counting the service the period of probation was not counted in the length of service of the workman. In my opinion, it is also a dispute which as per the proviso of Clause 12 of amalgamation scheme should have been referred along with the above reference regarding the weightage of service of the Reserve Bank of India. This Tribunal as per the Proviso to Paragraph 12 of the scheme cannot decide it, while answering the reference. While answering the reference, this Tribunal, has no power or jurisdiction to decide the virus of the constitutionality of the scheme of amalgamation. Accordingly, service weightage for the service in the Erstwhile Laxmi Commercial Bank in the ratio of 1.5:1, Canara Bank was rightly reckoned. One and a half years of service in Erstwhile Laxmi Commercial Bank was reckoned as one year service in the Canara Bank while determining the service conditions of the employees of Erstwhile Laxmi Commercial Bank. On the amalgamation of Erstwhile Laxmi Commercial Bank with the Canara Bank, it is the natural consequence that some of the employees of Canara Bank having the less number of years of service may be placed above the workman.

On perusal of the entire materials on record, the workman has failed to prove that any employee of Erstwhile Laxmi Commercial Bank junior to the workman has been placed at senior level in the seniority list.

Thus, the reference on the basis of the above observation is answered in positive that the action of the management of Canara Bank in not including the name of Sh. Arun Ghai in seniority list of Special Assistant notified on 31-3-91 and inducting his juniors is justified and the workman is not entitled to any relief. Let the Central Government be informed. File be consigned.

G. K. SHARMA, Presiding Officer

नई दिल्ली, 12 सितम्बर, 2008

का.आ. 2822.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसारण पें, केन्द्रीय सरकार, बैंक ऑफ इण्डिया के प्रबंधन के संदर्भ में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय इरनाकुलम के पंचाद (संदर्भ संख्या 114/2006) को प्रकृति करती है, जो केन्द्रीय सरकार को 11-9-2008 को प्राप्त हुआ था।

[सं. एल-12012/193/2003-आई और (बी-11)]

राजिन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 12th September, 2008

S.O.2822 .—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 114/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Ernakulam as shown in the Annexure, in the Industrial Dispute between the management of Bank of India and their workman, received by the Central Government on 11-9-2008.

[No. L-12012/193/2003-IR (B-II)]

RAJINDER KUMAR, Desk Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM- LABOUR COURT, ERNAKULAM

Present: Shri. P. L. Norbert, B.A., LL.B., Presiding
Officer

(Friday the 30th day of May, 2008/9th Jaishtha 1930)

I. D. 114/2006

(I. D. 3/2004 of Labour Court, Ernakulam)

Workman : George Shajan, S/o. Late U. Anthoo,
Kaliachammuri House,
Keerthi Nagar Road,
Elamakkara P.O., Ernakulam.

By Adv. Sri. M. R. Sudheendran

Management : The Zonal Manager,
Bank of India,
Kerala Zone, Kattur,
Ernakulam, Kochi-17.

By Adv. M.P.R. Nair.

This case coming up for hearing on 29-5-2008, this Tribunal-cum-Labour Court on 30-5-2008 passed the following :—

AWARD

This is a reference made under Section 10(1)(d) of Industrial Disputes Act.

2. Shri. George Shajan was a casual worker in Paravur Central Bank, Nayarambalam branch. While so, Paravur Central Bank was amalgamated with Bank of India in 1990. Thereafter the Bank of India refused to engage the worker. Representation was made by the workman. Then he was engaged at M.G.Road branch of the bank as part-time sweeper for sometime. There was break in service and hence the worker made representation to the management. Again he was engaged from May, 1992 as part-time sweeper as well as peon cum part-time sweeper. According to the workman since then he has been working continuously and completed continuous service of 240 days during 1992-93 itself. However the workman was not allowed to sign in the muster-roll. Payment was made as per debit vouchers. On 30-01-2001 the workman made representation to the management to regularise him in service. It was not considered favourably by the management. From 15-02-2003 he was not allowed to work. But no notice or compensation was given to him. The work done by the workman is perennial in nature. After the retrenchment freshers were taken.

3. The management contends that at the time of amalgamation of Paravur Central Bank with Bank of India all the employees on the roll of Paravur Central Bank were absorbed in Bank of India. The name of the workman was not there on the roll. Assuming that the workman was a casual labourer in the erstwhile bank, the management bank is not bound to engage him. Being a nationalized bank the management bank has prescribed procedure for selection of candidates for appointment. The management has not engaged the workman for a period of 240 days as contended by him. No freshers or juniors are engaged in the place of worker. No order of appointment or termination was issued to the workman by the bank. He is not entitled for compensation or retrenchment notice as claimed by him. The workman is not entitled for any relief.

4. In view of the above contentions the only point that arises for consideration is :

Whether the termination of service
of the workman is legal?

The evidence consists of the oral testimony of WW1 and the documentary evidence of Ext.W-1 on the side of the workman and MW1 and Exts.M1 and M2 on the side of the management.

5. The Point:- The engagement of workman in erstwhile Paravur Central Bank as Casual labour is not seriously disputed by the management. However according to the management at the time of amalgamation of the Paravur Central Bank with management bank the employees on the roll of Paravur Central Bank were absorbed in Bank of India. It is true that the workman was only a casual labourer in Paravur Central Bank. Hence his name may not be there on the roll of Paravur Central Bank. WW1 admits that he was not allowed to sign the Muster Roll. After the

amalgamation the workman was not engaged by the management bank. He made representation and thereafter he was taken as casual part-time sweeper admittedly by the management. The work of the claimant till May, 1992 was not continuous. However thereafter according to the workman he worked continuously till his termination on 15-02-2003 and completed 240 days, continuous service during 1992-93 itself. But the bank denies such continuous service. Since the workman admittedly was only casual labourer unless it is proved that he had worked continuously for 240 days or more during a calendar year he cannot claim any right or benefit under the provisions of I.D. Act. The burden is on the workman to prove continuous service. The Hon'ble Supreme Court in 2006 (1) LJ 442 has made it clear that the burden to prove continuous service of 240 days is on the workman and such burden can be discharged by calling for relevant documents from the management side and the worker himself mounting the box and stating his case.

6. The workman had called for 3 documents from the management side. They are the debit voucher of the period 1990-2003, petty cash vouchers of the year 1997 to 2002 and statement of SB Account No. 246 of Bank of India Staff canteen of the period 1990 to 2000. The bank produced the S.B. Account of staff canteen of the period 98 to 22-12-2000. Regarding the early period from 1992 - 98 it was submitted that the records of those periods are not available as the bank preserves documents only for a period of 8 years. It was also submitted that there are no debit vouchers to show payments to the workman as he had not worked during the period mentioned in the affidavit accompanying the petition calling for documents. It is also submitted that petty cash vouchers were also not available with the bank as no payments were made on the dates shown in the petition of the workman calling for documents. An affidavit to this effect was filed by the management. The staff canteen S.B. Account which is marked as Ext.M 1 does not reveal that the workman was paid anything by the bank during the period from 1998 to 2000. Ext.M2 is a relevant page of manual of instructions of Bank of India. It shows that as per item No. 17 vouchers are to be preserved only for a period of 8 years and other documents need be kept only for lesser periods. The workman has not been able to prove that he had worked continuously for 240 days or more in an year. No attempt was made by the workman to examine any staff of the bank to support his case. There is total absence of any evidence to show that he had worked during any particular period. Admittedly there was neither an appointment order nor a termination order. In the absence of any evidence regarding continuous service of 240 days he cannot claim any right under Industrial Disputes Act much less under Section 25-F of the Act and he is not entitled for notice or compensation under that provision. There is no violation of any provision of law when the management disengaged the workman on 15-02-2003. Point is answered accordingly.

In the result an award is passed finding that the action of the management in terminating the service of the workman Sri. George Shajan is legal and justified and he is not entitled for any relief.

The award will come into force one month after its publication in the Official Gazette.

Dictated to the Personal Assistant, transcribed and typed by her, corrected and passed by me on this the 30th day of May, 2008.

P. L. NORBERT, Presiding Officer

Appendix

Witness for the workman

WW1 - 25-09-2007 Shri. K.A. George Shajan.

Witness for the Management

MW1 - 28-05-2008 Shri. Sanilkumar G. (Affidavit only)

Exhibit for the workman

W1 - 30-11-2001 Photostat copy of representation submitted by workman to the Management.

Exhibits for the Management

M1 - Statement of SB Account No. 246 for the period from 03-09-98 to 31-12-2000.

M2 - Relevant page of manual of Instructions.

नई दिल्ली, 12 सितम्बर, 2008

का.आ. 2823.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, सैन्ट्रल बैंक ऑफ इण्डिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, मुम्बई के पंचाट (संदर्भ संख्या 5/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11-9-2008 को प्राप्त हुआ था।

[सं. एल-12011/181/2002-आई आर (बी-II)]

राजिन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 12th September, 2008

S.O. 2823.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 05/2003) of the Central Government Industrial Tribunal-cum-Labour Court, No. 2, Mumbai as shown in the Annexure in the Industrial Dispute between the management of Central Bank of India and their workman, received by the Central Government on 11-9-2008.

[No. L-12011/181/2002-IR (B-II)]

RAJINDER KUMAR, Desk Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL No. 2, MUMBAI****PRESENT****Shri A. A. Lad., Presiding Officer****Reference No. CGIT-2/5 of 2003****Employers in Relation to the Management of Central
Bank of India**

The Chief Manager
Central Bank of India, Zonal Office,
C/o. 317, M.G. Road,
Pune-(MS) 411 001.

And**Their Workmen,**

The General Secretary,
Akhil Bhartiya Adinastha Bank Karmachari
Sangh,
Flat No. 10, Jivandhara Society,
Jail Road, Saikheda Road,
Siddeshwar Nagar,
Nasik Road (MS)

APPEARANCES

For the Employer : Mr. L. L. D. Souza,
Representative.

For the Workmen : No appearance.

Mumbai, dated the 15th July, 2008

AWARD

The Government of India, Ministry of Labour by its Order No. L-1201/181/2002/IR(B-II) dated 27-01-2003 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following dispute to this Tribunal for adjudication :

"Whether the action of management of Central Bank of India in not extending the check-off facility to the members of Akhil Bhartiya Adinastha Bank Karmachari Sangh is correct and justified? If not, what relief the Union viz. Akhil Bhartiya Adinastha Bank Karmachari Sangh is entitled to?"

2. Claim Statement is filed by the General Secretary of the union stating that, said union is registered under Trade Union's Act, 1926. The union registration number is 4917 dated 06/04/1995. It is based at Gwalior, Madhya Pradesh. Said union has Constitution and Rules. Membership of the said union is open to any employee working in the subordinate category. Said rules and constitution of union is approved by the Registrar of Trade Unions.

3. According to union, large number of employees in the various subordinate categories employed in the various Nationalised Banks including first party bank have joined union and became member of it. Union is trying to have betterment to its members and making efforts for the welfare of the members of the union. It is collecting membership subscription at the rate of Rs 5/ p.m. for ordinary membership.

4. As number of employees are members of union who are working in the various Banks and branches of it, scattered throughout India. It find difficult for the union to contact personally said members and collect the membership every month or quarterly or yearly. For that, union has adopted check off arrangement with the management of the Banks whereby under authorisation of individual employee, Bank can deduct union membership subscription of the employees working in its office on monthly basis from wages payable to that employee and remit the said collectively to the second party union. Such a deduction regarding membership union subscription is permitted under Section 7 (2) (kkk) of the Payment of Wages Act. According to union, such a deduction towards subscription is in practice not only in the Bank but in other undertakings also. According to second party union, such a deduction regarding union membership subscription is term or condition of service regulated either by the Payment of Wages Act or by settlement or Award under the Industrial Disputes Act and any dispute in that regard is treated as industrial dispute under Section 2 (k) of Industrial Disputes Act.

5. According to second party union, the subordinate categories of staff working with first party are also members of second party union. Other unions functioning in the Banking Industry hardly represent the employees working in the Bank which are of subordinate category. According to union, it has membership not only of first party Bank but also in other nationalized Banks such as State Bank of Indore, State Bank of India, Bank of India, Punjab National Bank, Allahabad Bank etc. The employees working in the Bank who are members of second party union, on request of second party union and consent of concerned workman have been deducting the membership subscription of second party union and remitting the same to it. However the members of the so called union employed with first party at Nashik Branch has denied the said facility and first party is not following it. According to second party, it requested first party to extend said facility to its members. However, it was not considered by first party. So it is the case of second party that, first party be directed to deduct the membership subscription of members of second party union by following check off facility from salary of members working in first party Bank and be directed to remit it as per the understanding took place between union and number of banks.

6. This is disputed by first party Bank by filing reply Ex-9 making out case that, subject matter of reference of

following check-off facility for collecting membership subscription of members of second party union from the employee of the first party Bank and denying by the first party to follow the check-off system for the said purpose cannot become an Industrial Dispute and cannot be called Industrial Dispute under Section 2(k) of Industrial Dispute Act. Since it cannot be an industrial dispute, it cannot be adjudicated by this Tribunal. On this ground reference is not maintainable. It is further stated that, there are negligible members of second party union working in the first party branch and as such, it does not give any cause to the union to espouse the dispute. It is further stated that, nothing is brought on record by union that it can be authorised to espouse cause of workmen working with first party Branch at Nashik. According to first party check-off facility is a matter, strictly followed between workman and management and there union has no locus standi to represent the workman to insist first party to follow check off facility. According to first party, extension of check-off facility is not a condition of service and said facility can be utilised at the discretion of management. Union cannot compel first party to follow the check off facility. It is stated that, extension of facility of check off is purely a discretion facility which can be followed at the management discretion and such a facility cannot be claimed as a matter of right as claimed by union. To espouse such a cause, union must have sufficient members from the workmen working with first party. Since it is not proved by union that, majority members of union working with first party have given authority to union to extend the facility of check off for including membership of union from the employees of first party Branch. So it is submitted that the prayer prayed cannot be considered.

7. In view of above pleadings my learned predecessor framed issues at Ex-11 which I answer as follows:

Issues	Findings
(i) Whether the management bank proves that, the dispute raised does not constitute an industrial dispute?	Yes
(ii) Whether the management proves that the Sangh has no locus standi to represent the individual workman?	Yes
(iii) Whether the action of the management of Central Bank of India in not extending the check-off facility to the members of Akhil Bhartiya Adinastha Bank Karmachari Sangh is correct and justified?	Yes
(iv) What relief the union viz. Akhil Bhartiya Adinastha Bank Karmachari Sangh is entitled to?	No relief.

Reasons

Issue nos. 1 to 4:

8. By this reference, Government of India, Ministry of Labour & Employment by letter dated 27-01-2003

forwarded a dispute for adjudication by extending powers conferred under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act which reads as follows :

"Whether the action of the management of Central Bank of India in not extending the check-off facility to the members of Akhil Bhartiya Adinastha Bank Karmachari Sangh is correct and justified? If not, what relief the union viz. Akhil Bhartiya Adinastha Bank Karmachari Sangh is entitled to?"

As per subject-matter referred in the schedule, this Tribunal has to decide whether action of management in not extending check-off facility to the members of second party union is correct and justified? If not, what relief union can get from the Tribunal against first party?

9. According to union, it can utilize check-off facility to collect its membership subscription from the employees working with first party who are members of it, since union is not in position or as it is not feasible for the union to collect the monthly subscription by contacting members working at different places in the various banks including first party branch, therefore, check-off facility was followed. Even Bank agreed to follow the check-off facility. As per that, Bank was supposed to withdraw the membership subscription of the members of the union working with it and remit it to the union. However, Bank did not give any response to it, which resulted in non-collection of the subscription from the members of the second party working with first party. This is denied by first party saying that, said cannot become subject-matter of Industrial Dispute and nothing is on record to show that, union is authorised to espouse the cause of workmen. It is also stated that, check-off facility is matter of facility followed between workman and management and union has no role to play.

10. For that, let us see what evidence is led by both? In this case, when matter was fixed for recording evidence of second party union, union by an application sent through post Ex-24 & Ex-26 and prayed time. For having waited for number of dates, union started remaining absent and on 23-04-2007 Court passed an order to proceed ex-parte against union and directed management to file an affidavit. Accordingly, management filed affidavit at Ex-27 after two dates of the order. Even though the evidence of the management was filed in the form of affidavit Ex-27 in lieu of Examination-in-chief, witness was not cross-examined by the union though number of dates were given. Lastly reference was kept for written arguments as there was claim statement of union vis-a-vis written statement of the first party and that both have made out their case by filing their respective pleadings.

11. Since nobody appeared for union to support their pleadings and prayer prayed and when first party had objected that, union has no right to claim such relief of check-off facility, we have to see whether union can still get any relief in this background?

12. It is case of the first party that, subject matter referred in the dispute does not fall in the category of "Industrial Dispute". In Industrial Disputes Act, definition of industrial dispute is given under Section 2 (k) which reads like this:

(k) "industrial dispute" means any dispute or difference between employers and employees, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;

As per definition of industrial dispute given under Industrial Disputes Act, "industrial dispute" means, difference between employers and employees or difference between employers and workman or difference between workman and workman which is connected with the employment or non-employment on strength of employment or which is connected with condition of labour of any person. Here, union has dispute regarding not following check-off facility alleging that, it is not extended by first party. Bank has stated that union has no right to claim relief on that point since it is matter between employer and employee. And union has not said anything on that point. As far as definition of industrial dispute is concerned, subject matter of not extending "check off facility" cannot come within the conditions of labour or within terms of employment or non-employment as defined under Section 2 (k) of the Industrial Disputes Act. The prayer prayed by second party is about their problem which they are facing in collecting the membership subscription from its members who are working with first party Bank. According to first party Bank, since, members of second party working with first party have not given authority to second party to collect their membership subscription from the first party branch, second party cannot pray to extend the facility of check-off and cannot ask Bank to remit the amount as of right as happened in this case. When no evidence is lead on that point by the union, and when union has not proved that, it can claim relief of check-off facility as of right from the first party branch regarding its members working with first party branch, in my considered view, second party is not entitled to any relief. Though second party did not care to lead evidence vis-a-vis to prove their demand on the point of check-off facility which is to be extended by first party for remitting the membership subscription of its members working with first party, in my considered view, union is not entitled to any relief.

13. In view of discussions made above, I conclude that, union failed to prove that it has right to recover membership subscription of its members working with first party branch by following check off facility and sought direction from Tribunal to direct first party to remit the same to it. So I answer above issues to that effect and passes the following order:

ORDER

Reference is rejected with no order as to cost.
Dt. 15-5-2008

A. A. LAD, Presiding Officer

नई दिल्ली, 12 सितम्बर, 2008

का.आ.2824 — औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, बैंक ऑफ बड़ौदा के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, चण्डीगढ़ के पंचाट (संदर्भ संख्या 41/94) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11-9-2008 को प्राप्त हुआ था।

[सं. एल-12012/28/1994-आई आर (बी-11)]

राजिन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 12th September, 2008

S.O.2824.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 41/94) of the Central Government Industrial Tribunal cum Labour Court, No. 1, Chandigarh as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Bank of Baroda and their workman, which was received by the Central Government on 11-9-2008.

[No. L-12012/28/1994-IR (B-II)]

RAJINDER KUMAR, Desk Officer

ANNEXURE

**BEFOR SHRIGYANENDRA KUMAR SHARMA,
PRESIDING OFFICER, CENTRAL GOVT.
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-1,
CHANDIGARH.**

Case No. I, D. 41/94

Sh. Gian Chand, Secretary, All India Ex-Serviceman Bank Employees Federation, C/o P.N.B.,
Shalamar Road, Jammu-180001

...Applicant

Versus

The Deputy General Manager, Bank of Baroda, Zonal Officer 16, Sansad Marg New Delhi-110001.

...Respondent

APPEARANCES

For the workman : Sri Ronak Singh

For the management : Sri Parmod Jain

AWARD

Passed on 4-9-08

The Government of India vide notification No L-12012/28/94 IR B-2, dated 6-5-94 referred the following industrial dispute for judicial adjudication:—

"Whether the action of the management of Bank of Baroda, Jammu in imposing the punishment of stoppage of one increment on Shri S. Ronak Singh, Cash Clerk, vide their order dated 4-9-92 is justified? If not, what relief the said workman is entitled to?"

The dispute between the workman and the management of Bank of Baroda is regarding the availing leave fair concession illegally by the workman in the year 1987. The workman claimed his bill of L.F.C. in respect of the journey made by Upper India Express Train on 13-14th July, 1987. Explanation was called from the workman and dissatisfying with the Explanation, the workman was charge sheeted on 27-3-90. It was also ordered to conduct the enquiry on the incident for which the workman was charge sheeted. After conducting the enquiry, the enquiry officer filed the enquiry report and the disciplinary authority after issuing show-cause notice and providing an opportunity of personal hearing punished the workman with stoppage of three increments vide order dated 4-9-92. The disciplinary authority after examining the objections raised by the workman passed the detailed order regarding the stoppage of three increments with cumulative effect. The workman preferred an appeal and the appellate authority set aside the punishment given by the disciplinary authority and substitute the punishment by stoppage of one increment with cumulative effect.

The workman, in his statement of claim stated that proper opportunity of being heard was not given to him. He was not permitted to summon the witness in defense, who were the bank employees, through the enquiry officer.

The management, on the other hand alleged in written statement that proper opportunity of being heard was given, the witnesses which were named in the witness list by the workman were the employees of the bank management and it was found by the enquiry officer that it was not required to examine those witnesses.

I have heard learned counsel for the parties and pursued the materials on record.

The main dispute between the workman and the management of the bank is whether workman has wrongly claimed the L.F.C. bills in respect of the journey he has shown to be made by Upper India Express on 13-14th of July, 1987, from Jammu to Patna and back? This Tribunal has to be decided the applicability of the principle of natural justice in the light of the dispute. I have gone through the proceedings of the departmental enquiry. The details of the proceedings, have also been narrated by the workman in his statement of claim. The workman was given full opportunity to engage the defense representative. He accordingly, engaged the defence representative, but the same refused to contest his case. Thereafter, several opportunities were given to the workman to engage the defence representative but he failed.

From the enquiry proceedings, it is also clear that the enquiry officer also afforded the opportunity for defence

evidence to the workman. The enquiry officer issues summon/notices upon all the three persons named in the witness list. No one turn up on the date fixed and the workman requested the enquiry officer to pass the order that the defence witnesses be summoned at the expenses of the bank because all the persons named in the defence witness list, were the bank employees. Enquiry officer refused it with the contention that it is the duty of the workman to produce the defence witnesses. He can otherwise seek the assistance of the enquiry officer.

These were the points on the basis of which the workman has contended about the violation of the principle or natural justice. The Tribunal has to decide whether considering the nature of dispute, any prejudice has been caused to the workman by not summoning the witnesses named in the list. Three witnesses, which were requested to be summoned by the workman were the complainant Shri N. K. Pandhi, Shri R.D. Jatain the then Manager of the Jammu Branch and Shri Jaswant Singh Head Cashier, Ghandhi Nagar, Jammu Branch. All these three witnesses have no concern with the journey made by the workman from Jammu to Patna and back. The journey has been claimed to be made by the particular train, on the fix dates. In my opinion, it was not essential to summon the witnesses to prove the journey, whereas, it can be proved by the documents of the railways.

Principle or natural justice is not the unruling horse, it has certain limitations. If the proper opportunity of being heard is given and the person concerned is not availing those opportunities, it cannot be claimed that there has been violation of principle of natural justice. Likewise, no prejudice is caused to the workman, because considering the nature of dispute, to prove the charge, it was not necessary to summon the witnesses as prayed by the workman. Enquiry officer has rightly refused for summoning the witnesses at the expenses of the bank. The nature of charge is such that it can be proved by independent documentary evidence.

Thus, in conducting the enquiry there was no violation of the principle of natural justice and enquiry was conducted in a fair reasonable and proper manner.

I have gone through the enquiry report given by the enquiry officer. He has held the charge to be proved against the workman on the basis of the document obtained from the railway department with regard to the Upper Indian Express by which the workman claimed to travel and file the bill for making journey on 13-14th of July, 1987 from the Jammu to Patna and back. The document is regarding the fact that the Upper Indian Express has cease to operate from 26-1-87. If the train was not in existence, how a person can travel with that train?

The certificate given by the Railway Department was not controverted by the workman and on the other hand M. W2 Mr. Ramesh Kumar, Law Office has corroborated

and proved the document that the workman has not undertake journey in Upper India Express on 13-14th of July, 1987 from Jammu to Patna and back as claimed in the bills.

Under such circumstances, it was the duty of the workman to prove by some cogent evidence that he undertook journey by the train for which he claimed the bills. The workman has utterly failed and even has not agitated the matter before the enquiry officer and before this Tribunal, whether he has undertaken the journey by that train as stated earlier? He was disputing on the violation of the principle of natural justice on one count or the other. The Tribunal has to confine itself with the main dispute between the parties and in that background only, this Tribunal has to decide whether there has been any violation of principle of natural justice? The document issued by the Railway department is sufficient to prove the charge against the workman and I find no reason to interfere in the finding of enquiry officer.

Accordingly, the charge has been properly proved against the workman and the penalty of stoppage of one increment with cumulative effect in my opinion is in proportionate to the committed misconduct.

The reference is accordingly answered in positive that the action of the management of Bank of Baroda, Jammu in imposing the punishment of stoppage of one increment on Shri S. Ronak Singh, Cash Clerk, vide their letter, dated 4-9-92 is justified and the workman is not entitled to any claim. Let the Central Government be informed. The be consigned.

G. K. SHARMA, Presiding Officer

रई दिल्ली, 12 सितम्बर, 2008

का.आ. 2825.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ईश्वर वेंक. के प्रबंधन के संवाद निरीक्षणों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चैन्नई के पंचद (संदर्भ संख्या 89/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11-9-2008 को प्राप्त हुआ था।

[सं. एल-12011/8/2000-आई आर (बी-11)]

राजिन्दर कुमार, डेस्क अधिकारी

New Delhi, the 12th September, 2008

S.O. 2825.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 89/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of Indian Bank and their workman, which was received by the Central Government on 11-9-2008.

[No. I-12011/8/2000-IR (B-11)]

RAJINDER KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Monday, the 7th July, 2008

Present : K. Jayaraman, Presiding Officer

Industrial Dispute No. 89/2006

[In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of Indian Bank and their Workman]

BETWEEN

The General Secretary, : I Party-Petitioner Union
Indian Bank Employees,
Association (TN)
250, Linghi Street,
Chennai-600 001

Vs

The Dy. General Manager, : II Party-Respondent
Indian Bank, Circle Office,
510/511, Gandhi Road,
Kancheepuram-631501

APPEARANCE

For the Petitioner : Sri R. Sekar, Authorised
Representative

For the Management : M/s T.S. Gopalan and Co.,
Advocates

AWARD

The Central Government, Ministry of Labour vide its Order No. L-12011/8/2000-IR(B-11) dated 04-12-2006 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in the order is :

"Whether the demand of regularization of Sri K. Vinodh, Part-time Sweeper of Indian Bank, Valparai Branch is just and legal? If not, to what relief the workman is entitled to?"

2. After the receipt of the Industrial Dispute, this Tribunal has numbered it as ID 89/2006 and issued notices to both sides. The petitioner appeared through his Representative and the Management appeared through their Advocate and filed their Claim and Statement and Counter Statements respectively.

3. The allegations in the Claim Statement are briefly as follows:

The Petitioner Union espouses the cause of Sri K. Vinodh who was engaged as Temporary Part-time

Sweeper in Valparai Branch of the Respondent Bank. The concerned employee was working as such from 01-07-1997 after the Permanent Part-time Sweeper, Smt. Kunjammal retired from the service on 30-06-1997. Instead of regularizing his services in Valparai Branch where Permanent Part-time Sweeper was required because of the post falling vacant due to the retirement of Smt. Kunjammal, the Respondent Management with the sole intention of not absorbing him in the permanent category started engaging another person on turn basis from May, 1998. The Petitioner Association, therefore, raised a dispute before the Asstt. Labour Commissioner (C) against this unfair labour practice of the Respondent Management. Since the conciliation failed in this case, the ALC(C) has referred the matter to the Government but the Government declined to refer the dispute to Labour Court for adjudication. Therefore, the Petitioner Association filed a Writ Petition before the High Court and on the direction of the High Court, the matter was referred to this Tribunal for adjudication. The Permanent Part-time worker in Valparai Branch is an integral part of set up and such employment of Sri K. Vinodh as Temporary Part-time Sweeper cannot be considered as casual in nature. The guidelines of the Bank are clearly stated that the Bank should take up the matter of replacing the retiring staff at least 6 months in advance with the Employment Exchange. But, in this case the Respondent Bank did not take any such steps and instead chose to employ Sri K. Vinodh as Temporary Part-time Sweeper continuously from July, 1997. This was taken only in the process of exploiting the labour taking advantage of his poverty. Even in the industrial level settlements it is clearly stated that temporary employee includes a workman who is appointed in a temporary vacancy caused by the absence of a particular permanent employee. The engagement of Sri K. Vinodh is casual in nature is factually incorrect and motivated. Instead of regularizing his services as Permanent Part-time Sweeper, the Respondent Bank engaged another person from May, 1998 on turn basis only to deny the concerned employee permanent employment. This action of the Respondent Bank is perverse in nature. Therefore, the Petitioner Association prays this Tribunal to regularize the concerned employee's service as Permanent Part-time Sweeper and also consequential relief.

4. As against this, the Respondent in his Counter Statement alleged the Respondent is a nationalized Bank and, therefore, opportunities in the Respondent Bank should be made available to any eligible citizen of this Country and no one can claim regularization or absorption by reference to his having worked in the Bank for a long time as casual worker in any contingency. In the matter of employment of sub-staff, the Bank has to make a requisition to the Employment Exchange and from among the candidates sponsored by the Employment Exchange based on test and interview, the Bank can make selection for appointment. In this case by a Circular dated 12-08-1991, the Reserve Bank of India imposed a ban on the

Respondent Bank from making any recruitment. Added to it, the Bank introduced a Special Adhoc Scheme of Voluntary Retirement in the year 2000, pursuant to which 1336 employees in the category of Award Staff comprising Clerk, Sub-staff and Part-time employees accepted the offer of Voluntary Retirement Scheme, thus, Bank was able to right size its existing manpower. In the Valparai Branch of the Respondent Bank had a permanent Part-time Sweeper by name Smt. Kunjammal who retired on 30-06-1997. Only in view of the ban on recruitment, the Valparai Branch could not take steps to fill up the vacancy either by temporary employment or by permanent employment by making a requisition to the Employment Exchange. Therefore, the Branch has to employ casual labourer for attending to cleaning works of the premises. As such, the Branch was engaging alternatively K. Vinodh and Ms. Leelavathi, both are the children of Smt. Kunjammal as Sweeper on daily wages. In April, 1998 the said Leelavathi got married and stopped offering her services for engagement as casual labourer. The concerned employee knows the nature of employment and consequences flowing from it, therefore, the demand of the Petitioner Association cannot be considered. When the post of a Permanent Part-time Sweeper was not filled up and if some one was engaged to attend the cleaning work on daily wages and on need based situation is only a casual labourer. Such casual labourer cannot be treated as a Temporary Workman. Even temporary employees have no right to the post. It is false to allege that the concerned employee K. Vinodh was continuously engaged from July, 1997 to April, 1998. Sri Vinodh was engaged only for 106 days. The provisions of awards and settlement quoted by the Petitioner Association are applicable only to regular staff of the Bank and not applicable to a casual workman. Further, whenever a post falls vacant, the Bank cannot be compelled to fill up the post. Filling up the post depends upon several consideration like various restrictions imposed by Reserve Bank of India, the guidelines introduced by the Government of India and administrative requirement of the Respondent Bank. Therefore, Vinodh was not engaged as a Temporary Part-time Sweeper. He was given post only on a need based situation and he was not appointed to any post by the Bank. In view of the ban on recruitment, there was no contingency of the Branch to make a requisition to the Employment Exchange. Further, regularization cannot be a mode of recruitment. Hence, for all these reasons the Respondent prays that the claim may be dismissed with costs.

5. Again the Petitioner Association in its rejoinder alleged the right sizing of the Bank workforce by the Respondent Management through Voluntary Retirement Scheme as claimed by the Respondent Authorities has nothing to do with the present case. The job of sweeping, upkeep and maintenance of Branch premises is very important in a service industry like Banks. The only motive of the Bank is to deny employment to Sri Vinodh and the

Respondent tried to take shelter under the so-called ban on recruitment. The very fact that the concerned employee worked for 295 days from July 1997 to March 1999 in place of the retired Permanent Temporary Employee establishes that the work performed by him was not casual in nature. After the filing of the Writ Petition, the concerned employee was engaged for a period of more than 1400 days from 01-02-2002 to 31-03-2007 and till this date he continues to function as Temporary Part-time Sweeper. The Management only has been exploiting the poverty of the concerned employee for a very long years. Hence, the Petitioner Association prays an award in their favour.

6. Points for determination are:

- (i) Whether the demand of regularizing of Sri K. Vinodh in Valparai Branch of the Respondent Bank is just and legal?
- (ii) To what relief the concerned workman is entitled to?

Point No.1

7. The case of the Petitioner Association is that the concerned employee, Sri K. Vinodh was engaged as Temporary Part-time Sweeper at the Indian Bank, Valparai Branch of the Respondent Bank from July 1997 after the retirement of Permanent Part-time Sweeper, Smt. Kunjammal. Since the post was a sanctioned post and since it fell vacant from July 1997, the Bank is to initiate steps to recruit a regular Part-time Sweeper but instead of that they have employed Sri K. Vinodh temporarily on casual basis and now they refuse to regularize the services of the concerned employee which is illegal and against the provisions of law. The learned representative for the petitioner further contended that the Respondent Management's line of argument in denying employment to Sri K. Vinodh is (i) due to ban on recruitment imposed by Reserve Bank of India in the year 1996 and (ii) since Sri Vinodh was not sponsored by the Employment Exchange and he cannot claim the status of temporary workman but they have not denied that Part-time Sweeper post at Valparai Branch is a sanctioned post and it has fallen vacant from the year 1997 after the retirement of regular Part time sweeper. If really the contention of the Respondent Management is true, then they should have taken steps through Employment Exchange for appointing a Temporary Sub-staff but they have not done so. Further, even though in the case of Sri Vinodh, the Respondent admitted that the concerned employee was not taken through Employment Exchange as Temporary Sub-staff, they have confirmed the services of more than 140 temporary workman who are working in the capacity of Personal Drivers and Temporary Sub-staff in the Permanent Sub-staff cadre. This exposes the nature of the Respondent Bank. The other contention that he has not come through Employment Exchange is

also without any substance because under the Employment Exchange (Compulsory Notification of Vacancies) Act, 1959 under Section-3 it is clearly mentioned that the act shall not apply in relation to vacancies in any employment to do unskilled work. It is also clear from the above that when the Act is not applicable to the instant case, the question of sponsorship by Employment Exchange is only a pretext to deny employment to the concerned employee because under Section-2(i) "Unskilled Office Work" means any work done in an establishment by any of the categories viz. Daftary, Jamadar, Orderly and Peon, Dusting man or Farash, Bundle or Record Lifter, Process Server, Watchman, Sweeper and any other employee doing any routine or unskilled work. Therefore, in this case, the concerned employee who is sweeping the bank premises is only a unskilled and, therefore the Employment Exchange (Compulsory Notification of Vacancies) is not applicable to him. In this case, the concerned employee has worked more than 240 days in a continuous period of 12 months and he has also worked more than 2000 days from 1997-2006. Only in order to prove his case, the petitioner has taken out a petition for production of documents which are in the custody of the Respondent Management but the Respondent Management opposed the application on the ground that it is a confidential correspondence between the Head Office and the Branch Office and, therefore, they refused to produce the same and if that documents was produced before the Court it will clearly establish that the concerned employee has worked more than 240 days in a continuous period of 12 months. Further, the Respondent Management did not dispute the contention of the concerned employee that the concerned employee had worked for more than 2000 days from 1997 to 2006. He has also registered his name with the Employment Exchange. Under such circumstances, the concerned employee is entitled for the relief prayed for.

8. As against this, the Respondent contended that the Valparai Branch of the Respondent Bank had a Permanent Part-time Sweeper and one Smt. Kunjammal was worked as such and who retired on 30-06-1997 but in view of ban on recruitment the Valparai Branch could not take steps to fill up the vacancy either by temporary employment or by permanent employment by making a requisition to the Employment Exchange. Therefore, they have taken a decision to employ casual labourer for attending to cleaning works of the premises and the branch was engaged Sri Vinodh and Ms. Leelavathi, both are children of Smt. Kunjammal as Sweepers on daily wages and after Leelavathi left the place the branch was obliged to engage Sri Vinodh to work as casual labourer. The concerned employee knows the nature of employment and the consequences flowing from it. The demand of the Petitioner Union should not therefore be countenanced. Further, whenever a post falls vacant, the Bank cannot be compelled to fill up the post.

The filling up of post depends upon several considerations like various restrictions imposed by Reserve Bank of India, the guidelines introduced by the Govt. of India and administrative requirements of the Respondent Bank. Therefore, Sri Vinodh was engaged only as a casual labour and not as Temporary Part-time Sweeper. He was engaged only because of the absence of Permanent Part-time Sweeper. If any person is appointed as per the Recruitment Rules, then alone he can be called as temporary workman. When the post itself has not been filled up the person locally engaged by the Bank will only be a casual labour. It is only done on a need-based situation and such engagement is on daily wages only. The concerned employee was never appointed to any post of the Bank. Since, the Valparai Branch was not authorized to engage a temporary workman or a permanent workman, there was no contingency for the Branch to make a requisition to the Employment Exchange in view of the ban on recruitment and other administrative reasons. Therefore, at no stretch of imagination his appointment can be called as Temporary Part-time Sweeper. Further, regularization cannot be a mode of recruitment, as such, the relief prayed by the Petitioner Association cannot be given to the concerned employee. Further, the learned counsel for the Respondent relied on the ruling reported in 2006 4 SCC 1 SECRETARY, STATE OF KARNATAKA AND OTHERS VS. UMA DEVI AND OTHERS and argued that the Supreme Court has clearly stated "persons who get employed without following a regular procedure or even through the backdoor or on daily wages have been approaching the Courts seeking directions to make them permanent in their posts and to prevent regular recruitment..... A class of such employment which can only be called "litigious employment" has risen like a phoenix seriously impairing the constitutional scheme..... The Courts are swayed by the fact that the person concerned has worked for some time and in some cases for a considerable length of time. Such an argument fails when tested on the touchstone of constitutionality and equality of opportunity enshrined in Article-14 of the Constitution. Merely because a temporary employee or a casual wage workers is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad-hoc employees who by the very nature of their appointment, do not acquire any right. The Supreme Court further observed in the judgement "if a person who accepts an engagement either temporary or casual in nature, it cannot be said that he is not aware of the nature of his employment. He accepts the appointment with open eyes. It may be true that he is not in a position to bargain, not at arm's length and since he might have

been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently" and in that case the Supreme Court has struck down the appointment of temporary employees. Relying on this judgement, the learned counsel for the Respondent argued that in this case the concerned employee even when he was appointed as casual labour has known the fact that it is only as a casual he was employed and he cannot claim permanency by his employment, under such circumstances, the prayer for regularization cannot be asked for by the concerned employee. Again the learned representative for the petitioner argued though the Respondent argued that only due to ban on recruitment by the RBI they have not appointed Sri Vinodh as Temporary Part-time Sweeper, the conditions imposed by the RBI against the Indian Bank is not only with regard to recruitment. It is clear from Ex.M5, Page 14-15, the RBI sent a letter to the Management of Indian Bank regarding the Capital Adequacy Ratio of 8% due to the inability of the Bank to achieve prescribed capital to risk weighed asset ratio, the RBI had stipulated 8 conditions for the Bank to follow, one of the 8 conditions was ban on recruitment but here the Respondent Management tried to project that this was the only condition viz. ban on recruitment laid down by the RBI. Further, the Representative contended that conditions relating to ban on recruitment is still valid but the facts are otherwise. These conditions were imposed on Indian Bank to tide over its difficulties faced in 1996 when Indian Bank incurred losses and hence conditions were imposed by RBI. Now the Indian Bank has crossed the difficult period, even in the year 1997 the Indian Bank Management confirmed the services of more than 100 temporary workmen in the Sub-staff category. Further, Indian Bank has been earning profits for the 4th successive year, it has come out with IPO and aiming at 1 lakh crore business. Furthermore, one of the 8 conditions was also ban on expansion of the branch network in metro/urban centers but the Indian Bank has been on a branch expansion spree. It has recruited many staff in the past few years and also confirmed some of them in the cadre of Clerk and also the staff category. All these things clearly prove that the ban on recruitment is no more relevant and the conditions laid down in the letter are no more relevant. Only on the pretext of ban on recruitment the Indian Bank deny the rights of the concerned employee. The Respondent Bank exploits the innocent workmen to the maximum. The concerned employee worked more than 10 years of long and continuous service in the Part-time Sweeper cadre, that should be taken into consideration and his prayer is to be allowed by this Tribunal.

9. Though, I find some force in the learned counsel for the Respondent since the original appointment by the

Respondent Bank is only as a casual, the petitioner cannot compel the Respondent Bank to regularize his services. In this case the Respondent Management has also appointed one Leelivathi and subsequently one E. Vinayagam as casuals for the sweeping work. Furthermore, only because the concerned employee has worked continuously for more than 240 days, he cannot ask regularization on the ground that his appointment was on regular post. As such, I am not inclined to accept the contention that the petitioner is entitled for regularization. Even though, the Respondent has a permanent post vacant, the Respondent is to take steps as per the procedure and to regularize the person for the post. As such, I find this point against the petitioner.

Point No. 2

The next point to be decided in this case to what relief the concerned employee is entitled?

10. In view of my foregoing findings that the demand of regularization of Sri K. Vinodh is not just and legal, I find the concerned employee is not entitled to any relief.

11. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him corrected and pronounced by me in the open court on this day the 7th July, 2008)

K. JAYARAMAN, Presiding Officer

Witnesses Examined:-

For the I Party Petitioner : WWI Sri K. Vinodhanan

For the II Party Management : None

Documents Marked :

On the Petitioner's side

Ex. No.	Date	Description
Ex. W1	23-03-1999	Bio-data of Sri K. Vinodhanan
Ex. W2	07-08-1984	Record sheet of Sri K. Vinodhan (TC from Panchayat Union Middle School)
Ex. W3	28-08-1985	Employment Exchange Registration Card

On the Management's side

Ex. No.	Date	Description
Ex. M1	30-09-1978	Govt. of India, Ministry of Finance Banking Division - Director in respect of recruitment of Sub-staff in Public Sector Banks etc. (F/1/2/1/77/IR)
Ex. M2	04-03-1983	Indian Bank HO Circular 24/83
Ex. M3	16-08-1990	Govt. Of India, Ministry of Finance Banking Division- Direction regarding recruitment and absorption of temporary employees in Public Sector Banks

Ex. M4	06-07-1992	Settlement U/s 12(3) of ID Act between Indian Bank and Federation of Indian Bank Employees Union regarding persons engaged in leave vacancies of sub-staff
Ex. M5	26-6-1996	Letter from RBI (423/21-1-02/96)- Ban on recruitment of staff/ replacement for retirements etc.
Ex. M6	12-08-1996	Letter from RBI (444/21-1-02/96)- Restriction on recruitment of staff.

नई दिल्ली, 12 सितम्बर, 2008

का.आ. 2826.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, न्यू इंडिया एश्योरेंस कम्पनी लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, चण्डीगढ़ के पंचाद (संदर्भ संख्या 629/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11-9-2008 को प्राप्त हुआ था।

[सं. एल. 17013/10/1998-आई आर (बी-II)]

राजिन्दर कुमार, डेस्क अधिकारी

New Delhi, the 12th September, 2008

S.O. 2826.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 629/2005) of the Central Government Industrial Tribunal-cum-Labour Court, No. 2, Chandigarh as shown in the Annexure in the Industrial Dispute between the management of New India Assurance Co. Ltd. and their workman, received by the Central Government on 11-9-2008.

[No. L-17013/10/1998-IR (B-II)]

RAJINDER KUMAR, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, SECTOR 18A, CHANDIGARH

Presiding Officer: Shri. Kuldip Singh

Case I. D. No. 629/2005

Registered on : 24-8-2005

Date of Decision: 6-12-2007

Varinder Singh S/o Sh. Darsan Singh, House No 123, Adarashnagar, Pipliwala Town, Mani Majra, Chandigarh

....Petitioner

Versus

New India Assurance Co. Ltd. through Senior Divisional Manager, Regional office, SCO-36, Sector 17-A, Chandigarh

....Respondent

APPEARANCE

For the Workman : Mr. Ravinder Jain, Advocate

For the Management : Mr. N. K. Zakhmi, Advocate

AWARD

Counsel for the parties present. I have heard them on the question of fairness of the enquiry proceedings and have also gone through the file.

Admittedly this is a case in which the punishment was awarded to the workman after holding a domestic enquiry by the management. Hon'ble Supreme Court has time and again said that Domestic Enquiry in industrial cases has acquired great significance and industrial adjudication attaches considerable importance to such enquiry. Their Lordship has further said that an enquiry is not an empty formality, but an essential condition to the legality of the disciplinary order. In other words before the delinquent workman can be dismissed for misconduct, the employer should hold a fair and regular enquiry into the misconduct and dismissal without holding a regular enquiry would be an illegality. It is also settled principle of law that the disciplinary enquiry has to be quasi judicial, held according to the principles of natural justice and the enquiry officer has a duty to act judicially. Another principle which has also to be borne in mind is that in departmental proceedings the disciplinary authority is the sole judge of facts and in case of an appeal presented to the Appellate Authority, the appellate authority has also the powers and jurisdiction to re-appreciate the evidence and come to its own conclusions on facts being the sole fact finding authorities. Keeping these principles of law in mind I proceed to examine the case of the workman.

It is submitted by the counsel for the workman that the enquiry held against the workman was not fair and proper. He was not given full opportunity to defend himself and the punishment awarded to him is not only disproportionate but also harsh.

I have gone through the enquiry proceedings. In what manner the enquiry was conducted can be seen from the interim orders passed by the Enquiry Officer. The order dated 16th of Sept, 1996 reads that the workman was present on that day and requested for time to engage defense representative. The Enquiry Officer granted the time and adjourned the proceedings for 15th of Oct, 1996. The workman did not turn up till 5 in the evening on that day. The Enquiry Officer did not proceed in the matter and again adjourned the proceedings for 5th of Nov, 1996 on which

day also the workman did not appear. He, however, wrote a letter to the Enquiry Officer requesting for adjournment which he received on 1st of Nov, 1996. The Enquiry Officer adjourned the proceedings for 5th of Dec, 1996. The workman did not appear even on that date nor informed the Enquiry Officer, the reasons for his being absent. The Enquiry Officer still adjourned the proceedings for 30th of Dec, 1996 for proceeding ex-parte in the matter. The workman again requested, vide his letter dated 15th of Dec, 1996 for opportunity and the Enquiry Officer acceded to the request. The matter was adjourned to 8th of January, 1997. The workman did not attend the proceedings on that date also. The documents placed on record especially the copies of the notices and postal receipts show that the Management did its best to provide sufficient opportunity to the workman to defend his case but he did not avail of that opportunity. It was in these circumstances that the ex-parte proceedings were held in the matter and the evidence of the Management was taken. There is, therefore, no basis for the workman to claim that the Enquiry Officer did not provide sufficient opportunity to him to defend himself.

The perusal of the record shows that the memorandum of charges dated 18th of March, 1996 was served upon the workman and he filed the reply thereto dated 28th of April, 1996. The Management did not feel satisfied with the reply and decided to hold a regular enquiry in the matter. Vide their order dated 7th of August, 1996 appointed the Enquiry and Presenting Officers. The workman was also served with the articles of the charges. He was also provided with the statement of imputations, lists of witnesses and of the documents which the Management was likely to produce against him in the enquiry. The workman participated in the enquiry proceedings only on 16th of Sept. 1996. As stated above he did not take part in the enquiry proceedings on other dates. It is also noted in what circumstances the enquiry officer had to proceed in the matter ex-parte.

I have also considered the claim of the workman that the punishment awarded to him is disproportionate and harsh. In my opinion this claim of the workman is also baseless. The management has given the detail of absence of the workman during the period May 1994 to Dec. 1995 and for the period Dec. 1991 to April, 1994. He remained absent for 214 days during the first count and for 309 days during the second count. The workman did not rebut these facts by filing rejoinder or otherwise. During the enquiry also he did not produce any documentary or oral evidence to show that the charges framed against him were baseless. As against to it the witnesses of the Management fully supported the claim of the Management. The workman was given the copy of the report and he did not file appeal nor challenged the finding otherwise. On record is ex-s-10 which reads that the workman admitted his having remained absent from duty and gave his ill health as the cause but

produced to evidence to support his claim. There is nothing on record to show that the workman ever informed the Management of his inability to come for duty although he was living few miles away from the office of the Management. He could very well send telegram or request by any means including telephonic request. He did not bother to do that which shows that he was not sincere in serving the Management. He has also failed to show that he was physically unfit to convey his requests to the Management.

After going through the record of enquiry proceeding, placed on the file, I of the opinion that the fair and proper enquiry was held in the matter and that punishment awarded to the workman was well justified since the workman was not serious and sincere to serve the Management. There is nothing brought on record to show that the action of the Management of New India Assurance Co. Ltd., Chandigarh in terminating the services of Shri Varinder S/o Sh. Darshan Singh w.e.f. 9th of July, 1997 was unjust and illegal. The reference received from Government of India, Ministry of Labour vide their letter No. -L17013/10/98/IR(B-II) dated 28-5-1999 is answered against him holding that he is entitled to no relief.

Let a copy of this award be sent to the appropriate government for necessary action and the file be consigned to records after due completion.

KULDIP SINGH, Presiding Officer

नई दिल्ली, 19 सितम्बर, 2008

का.आ. 2827.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, सेंट्रल बैंक ऑफ इंडिया के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं.1, चण्डीगढ़ के पंचाट (संदर्भ संख्या 41/91) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11-9-2008 को प्राप्त हुआ था।

[सं. एल-12012/467/1990-आई आर (बी-1)]

राजिन्दर कुमार, डेस्क अधिकारी

New Delhi, the 19th September, 2006

S.O. 2827.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 41/91) of the Central Government Industrial Tribunal-cum-Labour Court, No. 1, Chandigarh as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Central Bank of India and their workmen, which was received by the Central Government on 11-9-2008.

[No. L-12012/467/1990-IR(B-II)]

RAJINDER KUMAR, Desk Officer

ANNEXURE

**BEFORE SHRI GYANENDRA KUMAR SHARMA,
PRESIDING OFFICER, CENTRAL GOVT.
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I,
CHANDIGARH**

Case No. I. D. 41/91

**Regional Manager, Central Bank of India, Regional
Office, Ambala Cantt.**

....Applicant

Versus

**President, Central Bank of India Employees Union, Haryana,
129 Lal Kurti, Ambala Cantt**

....Respondent

APPEARANCES

For the workman : Sh. B. S. Gill.

For the management : Sh. A. K. Batra.

AWARD

Passed on : 4-9-08

The Government of India vide notification no L-12012/467/90-IR(B-II) dated 5-4-91 referred the following industrial dispute for judicial adjudication:-

"Whether the action of the management of Central Bank of India in denying the back wages of Clerical Grade w.e.f. 1-12-84 to Sh. Shadi Lal, Clerk is justified? If not, to what relief is the workman entitled?"

The main controversy before this Tribunal is whether Sh. Shadi Lal is entitled for the back wages for the period from 1-12-84 to 1-4-86 for which the notional promotion was given along with the protection of seniority. On perusal of statement of claim, written statement and other materials on record, it is evident that as per the Promotion Policy Agreement dated 20-12-75, Sh. Shadi Lal qualified the 12th All India Written Test for his promotion which was conducted on 12-2-84. The interview was scheduled to be held on 29-10-84, but before the date of interview, he was arrested on 7-10-84 on account of unnatural death of his wife. Being in judicial custody for a long time, the workman was suspended from the services and this suspension continued up to 31-1-86. After revocation of suspension on 31-1-86, on the ground of his release (acquittal) in the criminal proceedings, as per the Promotion Policy Agreement dated 20-12-75, he was interviewed again and was promoted from 1-4-86. He was also given the benefit of seniority and it was also ordered that his notional promotion will be effective from 1-12-84 but no wages from 1-12-84 to 1-4-86 were given.

The workman raised an industrial dispute for getting the financial benefits of promotion from 1-12-84 to 1-4-86, and on account of failure of reconciliation proceedings in the office of reconciliation officer, the

Central Government referred the above mentioned reference for judicial adjudication. Both of the parties were afforded the opportunity for adducing evidence. Number of documents have been filed by the parties and Sh. Shadi Lal was also cross-examined on his affidavit.

The management, in spite of giving number of occasions could not adduce any evidence, and accordingly, vide order dated 12-8-08, this Tribunal closed the evidence of the management for the reasons mentioned in the said order.

It is admitted that as per the promotion Policy Agreement dated 20-12-75 which is on record; the workman qualified the 12th All India Written Test which was held on 22-2-84 for his promotion which was due from 1-12-84. After the written test, the interview was scheduled to be held on 29-10-84 but the workman could not appear before the Interview Board on account of his judicial custody in a criminal case for unnatural death of his wife from 7-10-84. Thus, on the date of interview, the workman was in the judicial custody.

It is the contention of the workman that his suspension order was served in jail, the interview letter should have also been sent through jail authorities. It is the contention of the management of respondent that interview letter was sent on his registered address. There is no evidence to prove that registered letter was sent to the workman on his registered address. Whereas, if the management of the bank had served the suspension letter through the jail authorities, what was the constraint before them not to serve the interview letter through the jail authorities has not been proved. It is also not the case of the management of the bank that interview letter was not given on account of his suspension and his detention in judicial custody. The person, who detained to the judicial custody, has certain rights and these rights cannot be infringed without any reasonable cause.

The Tribunal has to see whether any prejudice was caused to the workman on account of the act of management of respondent bank. It is true that interview letter was not given to the workman, but no prejudice was caused to him by non-issuing the interview letter. Just after his acquittal as per the Promotion Policy Agreement dated 20-12-75, he was again interviewed and was promoted without any delay. Furthermore, he was also notionally promoted from back date, dated 1-12-84 without any loss to his seniority in the services. The wages to a post are related directly with the working. Had the workman worked on the promoted post he was entitled for the back wages. His non-working to the promoted post was not due to the act of the management of respondent bank. But because of the circumstances that he was detained to the judicial custody in a criminal case on account of the unnatural death of his wife. This situation was beyond the control of the bank to provide him the work on promoted

post as well. If, during his judicial custody, he would have been interviewed and selected for promotion, whether it was possible under the law to provide him the wages without working on the promoted post, whereas, the constraint for non working on promoted post were beyond the control to the bank. Will Promotion Policy Agreement dated 20-12-75, clearly provides that in case a candidate fails to appear before the Interview Committee or fails to qualify in the interview, and has qualified a written test, he is to be given one more opportunity to appear before the Interview Committee. This provision is also regarding such unforeseen circumstances, where it was not possible for the workman to go for the interview for his promotion being detained in judicial custody on account of unnatural death of his wife. As per the terms and conditions of the Promotion Policy Agreement, just after his acquittal, he was called for the interview and selected for promotion. He was accordingly promoted with notional promotion benefits from 1-12-84 and the benefit of the seniority. Thus, the management of the bank has provided all the legal remedies which were available to Sh. Shadi Lal after his acquittal from the criminal charge.

As stated earlier, the pay scale and getting of back wages is directly linked with the working of the workman to the post and because of the circumstances mentioned in the body of this order, which were beyond the control of the bank, the workman could not work on promoted post from 1-12-84 to 1-4-86, he will not be entitled for the back wages as prayed. Accordingly, this reference is answered in positive that the action of the management of Central Bank of India in denying the back wages of Clerical Grade w.e.f 1-12-84 is justified. As per this reference, the workman is not entitled to any relief. Let the Central Government be informed. File be consigned.

G. K. SHARMA, Presiding Officer

नई दिल्ली, 25 सितम्बर, 2008

का.आ. 2828.— राष्ट्रपति श्री सतनाम सिंह को दिनांक 18-9-08 (पूर्वाह्न) से उनके 65 वर्ष की आयु का होने अथवा अगले आदेशों तक, जो भी पहले हो, केन्द्रीय सरकार आयोगिक अधिकरण-सह-श्रम न्यायालय-12, नई दिल्ली के पीठासीन अधिकारी के रूप में नियुक्त करते हैं।

[सं. ए-11016/9/2007-सीएलएस-II]

पी. के. ताम्रकार, अवर सचिव

New Delhi, the 25th September, 2008

S.O. 2828.—The President is pleased to appoint Shri Satnam Singh as Presiding Officer of the Central Government Industrial Tribunal-cum-Labour Court II, New Delhi w.e.f. 18-09-2008 for a period till he attains 65 years of age or until further orders, whichever is earlier.

[No. A-11016/9/2007-CLS-II]

P. K. TAMRAKAR, Under Secy.

नई दिल्ली, 8 सितम्बर, 2008

Versus

क्र.आ. 2829.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, स्टेट बैंक ऑफ पटियाला के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चण्डीगढ़ नं. 1 के पंचाद (संदर्भ संख्या 61/1995) को प्रकाशित करती है, जो केन्द्रीय सरकार को 8-9-2008 को प्राप्त हुआ था।

[सं. एल-12012/89/1994-आईआर (बी-3)]

बी. के. मनचन्दा, अनुभाग अधिकारी

New Delhi, the 8th September, 2008

S.O. 2829.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 61/1995) of the Central Government Industrial Tribunal-cum-Labour Court-1, Chandigarh as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of State Bank of Patiala, and their workmen, which was received by the Central Government on 8-9-2008.

[No. L-12012/89/1994-IR(B-3)]

B. K. MANCHANDA, Section Officer

ANNEXURE

**BEFORE SHRI GYANENDRA KUMAR SHARMA,
PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL- CUM- LABOUR COURT-1,
CHANDIGARH**

Case No. ID. 61/95

Shri Sat Pal C/o Shri D.L. Sika, General Secretary, State Bank of Patiala Employees Union, Delhi Road, Rohtak.

.....Applicant

The General Manager, State Bank of Patiala, Head Office-
The Mall, Patiala.

...Respondent

APPEARANCES

For the workman : None

For the management : Shri N.K. Zakhani

AWARD

Passed on 25-8-08

Central Government vide notification No.L-12012/89/94-IR (B-3), dated 30-6-95 has referred the following dispute to this Tribunal for adjudication:

“Whether the action of the management of State Bank of Patiala in terminating the services of Shri Sat Pal, ex-part time Sweeper is just, fair and legal? If not, what relief the workman concerned is entitled and from what date?”

2. No one is present, on behalf of workman. Learned representative of the management is also present. Since morning this reference has been called number of times. At 10.45 AM, it was ordered to be placed before this Tribunal once again at 2 pm. It is 2.30 now and on repeated calls no one is present, in spite of having of full knowledge of the proceedings of this reference. The reference is as old as referred to this Tribunal in the year 1995. On repeated calls since morning no one is present. Accordingly, the reference is dismissed in default for non-prosecution. Central Government be informed accordingly. File to be consigned.

Chandigarh
25-8-2008

G. K. SHARMA, Presiding Officer